

Annual Report

2023-24

Acknowledgement of Country

The Public Advocate and staff acknowledge Aboriginal and Torres Strait Islander peoples as Australia's first peoples and as the Traditional Owners and custodians of the land on which we live. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

Acknowledgement of Lived Experience

We acknowledge the experiential expertise of adults with impaired decision-making ability, whose rights we seek through our work to promote and protect.

Public availability

This report is available online at <https://www.justice.qld.gov.au/public-advocate/publications/corporate-publications/annual-reports>. Alternatively, you may contact our office to access a hard copy.

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Feedback on this report

Feedback on this report is welcomed. A feedback survey is available at <https://www.getinvolved.qld.gov.au/gi/consultation/13350/survey/10400/view.html?cid=1241511>. Alternatively, a hard copy of the survey may be requested from our office.

Disclaimer

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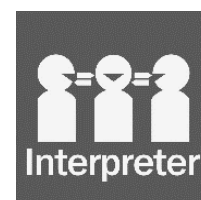


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Interpreter service

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



The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice,
and Minister for the
Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

23 October 2024

Dear Attorney-General,

I am pleased to present the Public Advocate's Annual Report for the financial year that ended on 30 June 2024.

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

The Annual Report provides information on the key activities of the Public Advocate and staff of the office for 2023-24, and a statement of the office's financial and operational functions for the year.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman
Public Advocate



Message from the Public Advocate

All of the work conducted by my office this year, as in previous years, is focussed on improving the ability of adults with cognitive disability to have meaningful lives of their own choosing. The systemic advocacy work undertaken by my office includes writing reports, discussion papers and other publications, giving public presentations, facilitating forums and meetings, and engaging generally with adults with cognitive disability and those individuals and agencies whose work affects people in this cohort.

The most significant piece of work the office completed this year was a report into the supported accommodation sector, which was tabled in Queensland Parliament on 12 September 2023. That report contained one recommendation – for there to be a parliamentary inquiry into this topic. I was very pleased that this recommendation was readily agreed to, with the Queensland Parliament's Community Support and Services Committee given the responsibility of conducting the inquiry.

An important element of the Committee's methodology proved to be the engagement of two non-government organisations (Queenslanders with Disability Network and Queensland Advocacy for Inclusion) to visit supported accommodation settings to assist current and past supported accommodation residents to participate in the inquiry. This, in my view, sets a new high point for parliamentary inquiry processes both here in Queensland and indeed throughout Australia.

The final report from the Community Support and Services Committee contained twelve reform recommendations (including recommendations suggested by my office in a submission) and was tabled on 7 June 2024. At the time of writing, the Committee's report was being considered by government.

Another of the office's significant projects this year concerned the involvement of adults with cognitive disability in Queensland's criminal justice system. In April 2024 the office released the first discussion paper for this project – on policing – and began consulting on potential reforms. Further discussion papers will follow in the year ahead, before a reform recommendations report is finalised.

The office also made considerable headway this year in an important project concerning parents with cognitive disability, which will be finalised in the year ahead.

Further to this work, I have continued to advocate in a wide array of settings for reforms on a number of key topics, some of which have been the subject of detailed earlier work by my office. This includes advocacy on adult safeguarding, the acute mental health system, the guardianship system, and the regulation of restrictive practices in the aged care and disability sectors. It was very pleasing to see the drafting of legislation this year (which was before Queensland Parliament at the time of writing) that, if passed, will introduce a senior practitioner authorisation model to the regulation of restrictive practices in Queensland disability settings.

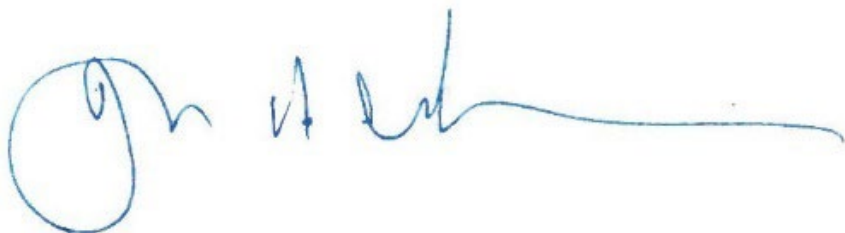
The office has also been active this year in advocating for many of the reforms recommended by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which released its final report in September 2023, as well as the reforms recommended by the Independent Review into the NDIS, which reported in October 2023. Amidst this advocacy my office joined with Queensland Advocacy for Inclusion, Queenslanders with Disability Network and the Queensland Human Rights Commission in hosting a well-attended forum at Queensland Parliament House in May 2024 on the topic 'After the Disability Royal Commission and NDIS Review: Disability Reform in Queensland'.

At that forum, my office took the opportunity to launch a modest publication, entitled *Expanding Horizons: Examples of Supported Decision Making in Queensland*. This booklet contains short pieces written by nine Queensland agencies that document positive supported decision-making examples from their own work.



The office also co-hosted – with ADA Australia, Caxton Legal Centre and the Queensland Government – a well-attended elder abuse forum in November 2023 at Queensland Parliament House.

As you can see in this annual report, the office has been busy! As always, I am immensely proud of the work produced by my small team, which consists of Tracey Martell, Jacinta Colley, Yuu Matsuyama, Kelly Motley, and Hannah Hodgson. And I remain ever grateful for the collegiality and support provided to my colleagues and me by people in government and non-government agencies, and by people with lived experience of cognitive disability, who so readily accept the invitation to assist my office in its work.

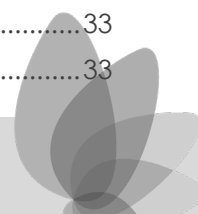


John Chesterman
Public Advocate



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The Public Advocate

Legislative functions

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

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

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

Under the Act, the functions of the Public Advocate are:

- 'Promoting and protecting the rights of adults with impaired capacity 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'.¹

In exercising these functions, the Public Advocate is required to apply the general principles outlined in Chapter 2A of the *Guardianship and Administration Act*.²

The Public Advocate also:

- has the power to '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 capacity for a matter';³ and has
- the 'right to all information ... necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter'.⁴

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

² *Guardianship and Administration Act 2000* (Qld) s11B.

³ *Guardianship and Administration Act 2000* (Qld) s210, intervention in cases is granted with leave of the court, tribunal, or person in charge of the inquiry and is subject to any terms imposed.

⁴ *Guardianship and Administration Act 2000* (Qld) s210A.



Office of the Public Advocate

Vision

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

Purpose

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

Values

Relationships and influence

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

Knowledge and leadership

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

Courage and integrity

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

Operating environment

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

Human rights

Queensland government agencies and statutory positions, including the Public Advocate, have continued to embed the principles and provisions of the *Human Rights Act 2019* (the Act) into workplace operations and culture throughout 2023-24.

The office has maintained staff training associated with human rights, along with ensuring that all policies and processes are compliant with the Act. The Public Advocate also contributes to DJAG's annual reporting requirements associated with the Act. An office staff member is a member of the DJAG Human Rights Working Group, which meets on a quarterly basis.

In early 2024 the Attorney-General announced an independent review of the Act. This review includes an opportunity to assess the implementation of the Act since fully commencing on 1 January 2020 and how well it is meeting its objective of building a culture of human rights in the Queensland public sector.

The report of the independent review is expected to be considered by Government later this year.⁵

⁵ The State of Queensland, Department of Justice and Attorney-General 2010-2024, *Human Rights Act 2019 Review*, <<https://www.justice.qld.gov.au/initiatives/human-rights-act-2019-review>>.



Royal Commission

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission or Commission) concluded in late 2023, with a report tabled in the Australian Parliament on 29 September 2023.

On the 31 July 2024 the Australian and State and Territory governments released their responses to the report and its recommendations.

The specific activities undertaken by the Public Advocate during the Royal Commission, and the Queensland Government's response to the Commission, are detailed later in this report.

The National Disability Insurance Scheme (NDIS)

As of 30 June 2024, the NDIS in Queensland included 142,297 active participants. More than half of these participants (98,757) are receiving supports for the first time.⁶

While the number of active participants is increasing at a steady rate, eligibility and access to the Scheme still remain issues, particularly for vulnerable groups including:

- people with psychosocial disability;
- people from culturally and linguistically diverse backgrounds;
- Aboriginal and Torres Strait Islander people; and
- people without appropriate supports and networks to assist them in becoming participants.

The Queensland Government has continued to operate an Access and Referral Team during 2023-24 to support vulnerable cohorts including:

- Queenslanders aged 7-64 years living in remote and very remote locations; and
- People who meet at least one of the following criteria:
 - Children and young people connected to the child protection system or Youth Justice Stronger Communities Initiative, or those who meet the criteria of the serious repeat offender index.
 - People who are culturally and linguistically diverse and are engaged with resettlement and refugee programs.
 - Adults living in the community and connected to offender support programs.
 - Adults living in level 3 supported accommodation.⁷

While the availability of this program is positive, its narrow focus does leave a number of vulnerable cohorts without the specific assistance they may need to establish their eligibility for the Scheme and obtain access.

At a broader level, the NDIS Scheme has recently undergone a complete review in accordance with a commitment made by the current Australian Government following the May 2022 election.

A final report from this review was tabled in the Australian Parliament on 7 December 2023. Information regarding the recommendations made in this Review are included in a later section of this report.

⁶ NDIS, *Queensland statistics as of 30 June 2024*,

<<https://www.ndis.gov.au/understanding/ndis-each-state/queensland#queensland-statistics-as-of-30-june-2024>>, June 2024.

⁷ Department of Child Safety, Seniors and Disability Services, *NDIS Access Support*,

<<https://www.dcssds.qld.gov.au/our-work/disability-services/national-disability-insurance-scheme/ndis-access-support>>, State of Queensland, 2024.



The team

The Public Advocate's team is committed to supporting the Public Advocate through systemic advocacy to improve the lives of adults who experience impaired decision-making ability.

The Public Advocate is an independent statutory position under the *Guardianship and Administration Act*, who is appointed by the Governor in Council on the recommendation of the Attorney-General. Dr John Chesterman is the current Public Advocate. He commenced in the role in August 2021 on a three-year contract, which has recently been extended for a further five years, until August 2029.

Staff who support the Public Advocate are employed by DJAG and appointed under the *Public Sector Act 2022* (Qld). The office relies on DJAG for core business supports, such as information technology and human resource services.

Code of Conduct and public sector values

The following public sector values guide the way the team works:

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

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

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

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

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

Workforce planning and performance

Five full-time officers support the Public Advocate. Workforce planning processes aim to align the business needs of the office with the skills and abilities of staff. The Public Advocate is committed to providing staff with professional development opportunities to improve their knowledge and skills so that they can help to protect and advance the interests of adults with impaired decision-making ability. Staff attended a range of learning and development opportunities including conferences, events, and training sessions during 2023-24.

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



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

Business planning and performance

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

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

The Public Advocate has a business plan that helps guide the work of the office. The business plan is reviewed annually to define and prioritise work. The *Public Advocate's 2023-24 business plan* outlined the actions and activities that would be undertaken by the office in identifying and responding to systemic issues across multiple sectors.

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

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

Aspects of the Public Advocate's performance can be easily measured, for example, the number of systemic advocacy submissions or reports completed in a year, or when a government report or a report from another authority directly quotes or references the Public Advocate's submission or other publication. Other performance questions are more difficult to answer, for example, how many lives have benefitted from a systemic improvement driven by the advocacy or work of the Public Advocate? Or, to what extent did the systemic advocacy of the Public Advocate influence or contribute to a positive change?

This annual report provides an overview of the activities undertaken by the Public Advocate in 2023-24 that demonstrate progress towards achieving positive changes in the protection of the rights and interests of adults with impaired decision-making ability.

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



Key focus areas – 2023-24 Business Plan

Major Projects

- advocate for a Senior Practitioner Model to authorise, regulate and monitor the use of restrictive practices across settings including residential aged care, disability services and health care;
- complete a systemic review of Queensland's supported accommodation sector, inclusive of recommendations to government;
- continue to manage and monitor the outcomes of a supported decision-making demonstration project in collaboration with the Office of the Public Guardian;
- commence a project reviewing the interactions of adults with cognitive disability with the criminal justice system;
- continue to advocate for the establishment of an Adult Safeguarding Agency and Commissioner in Queensland;
- continue to develop stakeholder connections and working relationships to assist with research regarding guardianship, elder abuse and advance care planning issues for Aboriginal and Torres Strait Islander people and communities; and
- monitor a series of key data indicators across systems that inform the Public Advocate's systemic advocacy activities.

Disability

- provide timely advice and feedback on scheme issues and responsiveness to government, the NDIS Review, the NDIA, and the NDIS Quality and Safeguards Commission;
- commence the liaison and engagement process associated with a potential follow up report regarding the deaths of people with disability in care;
- continue to advocate for adequate and recurrent funding for advocacy support;
- consider the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) and its implications for Queensland legislation, policy and service provision; and
- monitor the delivery of services and supports to residents of the Forensic Disability Service and the treatment and transition of residents.

Older people

- contribute to the processes associated with the implementation of aged care system reforms as recommended by the Royal Commission into Aged Care Quality and Safety; and
- contribute to the development and implementation of the Australian Government's National Plan to address abuse against older Australians.

Mental Health

- monitor progress on the conclusions and recommendations included in the Public Advocate's acute mental health system review; and,
- continue to engage with the Chief Psychiatrist about policies, guidelines and other monitoring and oversight mechanisms to promote and protect the rights of adults in the mental health system.

Law and justice

- continue to advocate for the rights of people with impaired decision-making ability to form relationships and engage in sexual expression.

Guardianship and administration

- continue to advocate for the harmonisation of powers of attorney legislation and the development of a national register of enduring documents;
- continue to advocate for amendments to the *Guardianship and Administration Act* to allow guardianship clients to identify themselves when speaking about their experiences within the system;
- monitor the implementation of the recommendations from the systemic review of the Public Trustee's fees, charges, and practices; and
- monitor the QCAT Hospital Hearings Project to ensure that people can meaningfully participate in hearings and put alternative approaches to their care and support before the tribunal.

Community Enquiries

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

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

During 2023-24, the Office received 173 community enquiries, 140 of which were unique contacts. The office referred most enquiries (around 80% of unique contacts) to a variety of agencies and organisations, including members of the guardianship and administration system within Queensland (e.g., the Queensland Civil and Administrative Tribunal (QCAT), the Offices of the Public Guardian and the Public Trustee), Community Legal Centres, Independent Patient Rights Advisers, the Office of the Chief Psychiatrist, the National Disability Insurance Agency (NDIA), and the NDIS Quality and Safeguards Commission. A total of 53 individual enquiries were referred to agencies providing individual advocacy services or the Disability Advocacy Pathways service (highlighted later in this report). Other enquirers made general queries or comments, including questions and feedback regarding publications released by the Public Advocate.

Governance

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

The Public Advocate's office fulfilled DJAG's corporate governance and accountability requirements in 2023-24 and was not subject to any departmental or external reviews.

Information systems and recordkeeping

The office uses DJAG's record management system to manage electronic and physical documents and follows DJAG policies and processes for record keeping. During 2023-24 the office continued to improve record keeping processes to enhance compliance with the *Public Records Act 2002* and the Queensland State Archives Records Governance Policy. The office abides by the general retention and disposal schedule developed by Queensland State Archives.

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



Engagement and consultation

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

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

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

Throughout 2023-24, the Public Advocate participated in regular meetings with a range of stakeholders including; the Public Guardian, the Public Trustee, the President and representatives of QCAT, the Chief Psychiatrist, the Director of Forensic Disability, the Department of Child Safety, Seniors and Disability Services (DCSSDS), Uniting Care (Social Justice and Policy), and Queensland Advocacy for Inclusion (QAI). These meetings were in addition to working/advisory group meetings.

In 2023-24, the Public Advocate was on, or was represented on, the following working and advisory groups. Appendix 3 provides an overview of the purpose of each group.

Lead agency	Working/advisory group
Commonwealth Attorney-General's Department	Stakeholder Reference Group – Enduring Powers of Attorney reform
Public Advocate (Chair)	Australian Guardianship and Administration Council (AGAC)
Queensland Health	Health and Disability Interface Advisory Group QCAT Guardianship Program Governance Group
Public Advocate (Chair)	Mental Health and Disability Legal Assistance Forum
Queensland Law Society	Health and Disability Law Committee Elder Law Committee
Department of Child Safety, Seniors and Disability Services (DCSSDS)	Positive Behaviour Support and Restrictive Practices Review Reference Group
DJAG	Human Rights Working Group
Queensland Ombudsman	Public Interest Disclosures Agency Network
Public Advocate (Chair)	National Adult Safeguarding Roundtable
Public Advocate (Chair)	QCAT Guardianship Stakeholder Group



Systemic Advocacy Projects

At any given time, the Public Advocate is working on a range of systemic advocacy projects in response to issues that have been raised by stakeholders and people with lived experience of impaired decision-making ability.

These projects are ones that require additional research, consultation, and review for the development of reform recommendations to government.

Under the *Guardianship and Administration Act*, the Public Advocate also has the ability to provide reports of this nature to the Attorney-General for tabling in the Queensland Parliament. This is one of the principal ways in which the Public Advocate can drive systemic change to improve the lives and wellbeing of adults with impaired decision-making ability.

During 2023-24, the Public Advocate:

- Completed '*Safe Secure and Affordable*'? *The need for an Inquiry into supported accommodation in Queensland*. This report was tabled in the Queensland Parliament on 12 September 2023. Further details regarding this project, and the consequent Parliamentary Inquiry, are included in the Disability section of this report.
- Commenced a project investigating the experiences of adults with cognitive disability who have interacted with the Queensland criminal justice system.
- Commenced a project exploring the needs of parents with cognitive disability. The final report from this project is expected during the 2024-25 financial year.

The Public Advocate has also continued to advocate for the implementation of reform recommendations associated with the following reports and projects:

- The *Adult Safeguarding in Queensland* project, which calls for the introduction of an Adult Safeguarding Commissioner and local Adult Safeguarding Networks within Queensland. This report was tabled in the Queensland Parliament on 8 December 2022 and is currently under consideration by government.
- *Public Accountability, Private Lives: Reconsidering the Queensland guardianship system's confidentiality requirements*. This report was released in 2022 and looks, in particular, at the making of confidentiality orders by QCAT and Section 114A of the *Guardianship and Administration Act*. This section of the Act currently prohibits the publication of the identity of a person who is subject to a guardianship proceeding (unless certain other conditions apply).
- *Better Pathways: Improving Queensland's acute mental health system*, which made 21 recommendations for improvements to the system in Queensland.
- *A discussion of section 216 of the Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'*, a discussion paper concerning the right of adults with impaired decision-making ability to engage in sexual relationships.

Reference is made to these papers and reports throughout this report.



Disability

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

The Disability Royal Commission tabled its final report in the Australian Parliament on 29 September 2023.

The Commission commenced in 2019 and spent five years conducting the largest ever investigation into the experiences of Australians with disability.

In total, the Commission received 7,944 submissions and published 14 issues papers prior to the release of its final report, which spanned 12 volumes and included 222 recommendations to Government. The report's recommendations detail 'how to improve laws, policies, structures and practices to ensure a more inclusive and just society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation'.⁸

On 10 May 2024, the Public Advocate, in conjunction with the Queensland Human Rights Commission, QDN and QAI, hosted 'After the Disability Royal Commission and NDIS Review: Disability Reform in Queensland'. This one-day event provided members of the disability sector with the opportunity to get together to discuss the findings and recommendations of the Disability Royal Commission and the NDIS Review (included later in this report) and their implications for disability reform in Queensland.

More than 200 sector representatives and Queenslanders with lived experience of disability attended the event (in person or online), which concluded with a 'where to from here' presentation from a senior government official. This presentation detailed work completed to date by the Queensland Government and the timing of an expected full response to the recommendations from the Disability Royal Commission.

Following this, on 31 July 2024, the Australian and State and Territory Governments released their responses to the Commission's report.

The Australian Government has primary or shared responsibility for 172 recommendations included in the report, with the remainder the sole responsibility of state and territory governments.

Of these recommendations, the Australian Government:

- accepted 12 recommendations;
- accepted 1 recommendation in part;
- accepted in principle 117 recommendations;
- is considering a further 36 recommendations; and,
- noted 6 recommendations.⁹

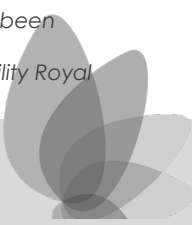
The Queensland Government, in its response, noted that 130 of the 222 recommendations made by the Commission were directed to the Queensland Government for response.

Of these, the Queensland Government:

- accepted 8 recommendations;
- accepted 1 recommendation in part;
- accepted in principle 95 recommendations;
- is considering a further 23 recommendations;
- noted 2 recommendations; and,

⁸ Royal Commission into Violence, Neglect and Exploitation of People with Disability, *The Royal Commission's Final reports has been released*, < <https://disability.royalcommission.gov.au/>>, n.d.

⁹ Commonwealth of Australia (Department of Social Services), *Summary of the Australian Government Response to the Disability Royal Commission*, Canberra, July 2024.



- did not support 1 recommendation.¹⁰

The recommendations accepted by both tiers of government principally relate to the development of strategies and policies, some training and development activities, and other administrative based procedures (e.g., data collection). Most of the recommendations with the potential to have a significant impact on the lives of people with disability have been accepted in principle or are subject to further consideration, meaning that they may not be implemented, or may be implemented in a different way to that recommended by the Commission.

The response to the Disability Royal Commission's report by all levels of government has not been received favourably by a number of peak disability service and advocacy organisations, with concern expressed on occasion that the 'scale of the response doesn't match the scale of violence happening to people with disability'.¹¹

Public Advocate involvement

Throughout the course of the Commission, the Public Advocate was involved in a series of stakeholder roundtables and consultations, focussed on areas including guardianship and supported decision-making.

The reports prepared by the Public Advocate during this time were also submitted to the Commission, including those related to the operation of the guardianship and administration system in Queensland, the use of restrictive practices across the disability and aged care sectors, the safeguarding of at-risk adults, and the fees and charges regime of the Public Trustee.

In his capacity as chair of AGAC, the Public Advocate also co-ordinated a cross-jurisdictional submission to the Commission in 2022.

Of note, the Queensland Government's response to the recommendations did include reference to several of the Public Advocate's reports and papers including:

- *Adult Safeguarding in Queensland: Volume 2: Reform Recommendations* – which calls for the establishment of an adult safeguarding agency in Queensland, and the development of regionally based adult safeguarding networks to encourage community ownership and action regarding local adult safeguarding concerns.
- *Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices.*

The Public Advocate will continue to monitor the government response to the recommendations from the Disability Royal Commission and advocate for reforms critical to upholding and protecting the rights of Queensland adults with impaired decision-making ability.

The National Disability Insurance Scheme (NDIS) Review

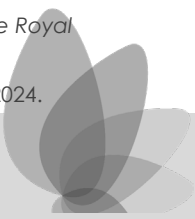
On 7 December 2023, the final report of the NDIS Review, *Working together to deliver the NDIS*, was officially released by the Australian Government.

The report included 26 recommendations with 139 actions to change the system that supports eligible people with disability in Australia.

The report's recommendations included several of the Public Advocate's proposed reforms to the Queensland disability sector and guardianship and administration system that were included in submissions to the Review.

¹⁰ State of Queensland (Department of Child Safety, Seniors and Disability Services), *Queensland Government Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, Brisbane, July 2024.

¹¹ ABC News, *The disability royal commission demanded extensive change. Are the government responses big enough?*, <<https://www.abc.net.au/news/2024-08-01/disability-royal-commission-government-response-analysis/104160958>>, 1 August 2024.



They included:

- Recommendation 4: Support all people with disability to navigate mainstream, foundational and NDIS service systems.
- Recommendation 5: Provide better support for people with disability to make decisions about their lives.
- Recommendation 8: Fund housing and living supports that are fair and consistent, and support participants to exercise genuine choice and control over their living arrangement.
- Recommendation 16: Deliver safeguarding that is empowering and tailored to individuals, their service needs and environments.
- Recommendation 18: Reinvalidate efforts to urgently drive reduction and elimination in the use of restrictive practices.
- Recommendation 19: Embed effective quality and safeguarding institutions and architecture across the disability support ecosystem.¹²

Following the release of the report, the Public Advocate has been involved in a number of meetings with government and non-government representatives to advance his recommendations, particularly in relation to the establishment of an Adult Safeguarding Commissioner in Queensland, which also received support in the adult safeguarding recommendations of the Disability Royal Commission.

The Queensland Government recently announced that its response to the NDIS review would be issued at the end of 2024, aligned with the timing of responses expected from other States and Territories across the country.

Supported accommodation project

In response to concerns registered by disability sector stakeholders, the Public Advocate completed a review of level 3 residential services in Queensland during 2023.

The report associated with this review, *'Safe, secure and affordable'? The need for an inquiry into supported accommodation in Queensland*, was tabled in the Queensland Parliament on 12 September 2023.

It focuses on the provision and regulation of level 3 residential services in Queensland, however many of the concerns discussed relate to the broader supported accommodation sector, including level 1 and 2 residential services and other kinds of shared-living arrangements in which Queenslanders with significant support needs are residing.

Critical systemic issues identified in the report include:

- Complex regulatory and legislative frameworks, at all levels of government. While the legislative environment is complex, key elements critical to the well-being of residents are also not addressed, including a regulated fees and charges schedule.
- Fragmented and disjointed safeguarding mechanisms.
- Blurred lines of responsibility and potential conflicts of interest resulting from the dual role of providers as accommodation and service providers. This is heightened if residents are also NDIS participants, as many accommodation providers (or closely related entities) are also NDIS service providers.
- Standards of accommodation, food and services provided to residents.
- The potential for level 3 services to be closed environments, where residents have limited access to externally provided services or opportunities to participate in broader community life.
- The suitability of this model of accommodation and service provision to meet the needs of residents with complex support needs, many of whom have an intellectual disability, acquired brain injury, mental health concerns or issues with drug and alcohol misuse. The number of residents with mental health concerns is reported to have increased significantly over the last decade, with entry into level 3 residential services now being a recognised discharge pathway for people from authorised mental health facilities who are without family or other supports.

¹² Australian Government, NDIS Review, *Recommendations and Actions*, <<https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/preface/recommendations-and-actions>>, December 2023.



The report included only one recommendation – that a Parliamentary Inquiry be conducted into the provision and regulation of supported accommodation in Queensland.

The Queensland Government accepted this recommendation and a Parliamentary Inquiry, guided by 29 critical questions raised in the report, was conducted by the Queensland Parliament's Community Support and Services Committee from 26 October 2023, with its final report tabled on 7 June 2024.

In addition to accepting written submissions and conducting public hearings across the State, the Committee commissioned QDN and QAI to actively consult with residents of level 3 residential services and assist them, if required, to prepare submissions to the Committee.

The Committee's final report included a series of recommendations focussing on:

- Improving choice and control so that residents maintain the right to choose where they live and from which organisations they receive supports.
- Identifying support needs via a census of residents and individual independent needs assessments.
- Improving rental agreements with the introduction of tenancy service agreements, which provide additional protections for residents.
- Additional funding to improve staff skills and residential service infrastructure across Queensland.
- Improving the transparency and accountability of compliance reporting by the Department of Housing, Local Government, Planning and Public Works.
- A review of the *Residential Services Act 2002* (Qld), to incorporate the improvements noted above, as well as placing a focus on best practice in supported accommodation.

The Government's response to this report is expected to be tabled in the Queensland Parliament on 7 September 2024.

The Public Advocate raised supported accommodation in his submission to the *National Housing and Homelessness Plan Issues Paper* in September 2023, noting that this type of accommodation is often not considered or incorporated into homelessness or housing action strategies.

He requested that supported accommodation be considered as a component of the current housing/homelessness landscape in the National Plan and, if appropriate, that some recommendations be made regarding the adequacy of the regulations, safeguards and standards that currently surround its provision.

In March 2024, the Public Advocate also had an article published in *Parity* (a national homelessness magazine) regarding the supported accommodation inquiry.¹³

Restrictive Practices Legislation

Successive Public Advocates have called for changes to the existing restrictive practices regime in Queensland.

In 2022, DCSSDS, in conjunction with DJAG, began a review of Queensland's existing framework for authorising the use of restrictive practices in specialist disability services funded by the NDIS and funded or provided by DCSSDS. The review consulted with a reference group of external stakeholders, which included the Public Advocate.

On 14 June 2024, the Hon Charis Mullen MP, Minister for Child Safety, Minister for Seniors and Disability Services and Minister for Multicultural Affairs introduced a Bill into the Queensland Parliament, designed to implement a new framework for the authorisation of restrictive practices in specialist disability services in Queensland.

¹³ Chesterman, J., 'Queensland's supported accommodation inquiry', *Parity*, vol. 37, issue 2, March 2024, pp. 14-15.



The policy objectives of the new Bill, the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024, are to:

- promote the reduction and elimination of the use of restrictive practices in relation to people with disability receiving National Disability Insurance Scheme (NDIS) supports or services or state disability services under the *Disability Services Act 2006* (DS Act);
- move toward greater national consistency in authorisation processes based on the *Principles for nationally consistent restrictive practices authorisation processes*;
- align Queensland's restrictive practices authorisation framework with the national NDIS (Restrictive Practices and Behaviour Support) Rules 2018; and,
- expand the reportable deaths in care framework to reinstate coverage for persons who receive disability supports under the Commonwealth Government's Disability Support for Older Australians (DSOA) program.¹⁴

Practically, the Bill proposes the establishment of a Senior Practitioner to authorise the use of restrictive practices according to an individually tailored positive behaviour support plan that is lodged by a service provider. The Senior Practitioner would replace the existing largely consent-based model that is in place for the use of restrictive practices in disability services across Queensland.

The establishment of a Senior Practitioner is supported by the Public Advocate. During the Committee Inquiry process that followed the introduction of the Bill into the Queensland Parliament, the Public Advocate provided a submission and appeared as a witness at a public hearing.

During this process, the Public Advocate advised the Committee of his support for the new framework and made some additional suggestions, including:

- The strengthening of the legislation to make clear that restrictive practices for a person with disability must only be used if authorised under the Act.
- The addition of a new generic ground in the legislation for the cancellation of a restrictive practice authorisation by the Senior Practitioner if there is no longer a need for its use on a person with disability.
- Changes to the timeframes associated with the development and review of positive behaviour support plans.
- The extension of the Senior Practitioner's role to authorise restrictive practices in other areas, such as aged care, health, and the National Injury Insurance Scheme.

The report of the Committee Inquiry regarding the Bill was tabled in the Queensland Parliament on 2 August 2024. It included a recommendation that the Bill be passed, with amendments related to some of the Public Advocate's recommendations (above). The Committee also recommended that the Bill be expanded to apply to restrictive practice usage in residential services under the *Residential Services (Accreditation) Act 2002*.¹⁵

Adult Safeguarding

In 2013, the Public Advocate completed a Churchill fellowship, in which he investigated responses to violence, abuse, exploitation, and neglect of at-risk adults in the USA, Canada and the United Kingdom. With the aim of improving protections available for at risk adults, the work also included a review of Australia's responses, with a particular focus on Victorian legislation, policies, and programs. It also concluded with a set of reform recommendations.

Since that time the Public Advocate has completed a range of work in this area, the most recent of which is his *Adult Safeguarding in Queensland* report (noted in this report).

In 2024, the Public Advocate participated in a collaboration between the Churchill Fellowship Trust and the University of Queensland, which resulted in the publication *Policy Futures: A Reform Agenda*. Included in this publication is an article by the Public Advocate on supporting and safeguarding at-risk adults. This article contained two key recommendations:

¹⁴ Queensland Parliament, Community Support and Services Committee, *Report No. 48, 57th Parliament - Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024*, <<https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=165&id=4437>>, July 2024.

¹⁵ Ibid.



1. By October 2025, every state and territory should legislatively empower an adult safeguarding agency to be able to investigate and respond to concerns that at-risk adults may be experiencing abuse, neglect or exploitation.
2. The Commonwealth Attorney General, through the Standing Council of Attorneys-General, should monitor national adult safeguarding developments in the wake of, and consistent with, the recommendations and requirements of the Australian Law Reform Commission's Elder abuse – A national legal response report, the National Plan to Respond to the Abuse of Older Australians [Elder Abuse], and the final report from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.¹⁶

The publication was officially launched at an event held in Canberra in late June 2024.

During 2023-24 the Public Advocate also published a journal article, *Adult Safeguarding in Australia after the Disability Royal Commission*, in *Research and Practice in Intellectual and Developmental Disabilities*.¹⁷

Health care for people with disability

Comprehensive Health Assessment Program (CHAP)

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

The Queensland Centre for Intellectual and Developmental Disability initially developed and licenced CHAP, which consists of a questionnaire that documents a person's health history and provides their General Practitioner (GP) with prompts and guidelines relating to health issues.

Access to CHAP documentation by Queenslanders with an intellectual disability was initially supported by the Queensland Government, however the Commonwealth Department of Health and Aged Care (DHAC) has recently acquired a permanent licence to develop and publish the CHAP.

This means that the CHAP can now be accessed for free on the Commonwealth Department's website.

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

National Roadmap for Improving the Health of People with Intellectual Disability

Increasing use of existing Medicare Benefit Scheme (MBS) items, such as CHAP (noted above), is one of the key objectives of the National Roadmap for Improving the Health of People with Intellectual Disability (the Roadmap).

Released in July 2021 by the DHAC, the Roadmap sets out a range of actions to improve the health outcomes of people with intellectual disability. The Roadmap forms part of Australia's Primary Health Care 10 Year Plan 2022-2032.

In the Roadmap, six main objectives are mapped over the short, medium and long term. They include:

- Improved support for people with intellectual disability and their families and carers.
- Developing better models of care for people with intellectual disability, including:

¹⁶ Chesterman, J., 2024, Supporting and Safeguarding at-risk adults, in Yarnold, J., Davey, A., Coghlan, R., Brown, P., and Murphy, M (Eds), *Policy Futures: A Reform Agenda*, Issue 3. The University of Queensland and The Winston Churchill Memorial Trust.

¹⁷ Chesterman, J., 'Adult Safeguarding in Australia after the Disability Royal Commission', *Research and Practice in Intellectual and Developmental Disabilities*, < <https://doi.org/10.1080/23297018.2024.2316291> >, 2024.



- developing better models of health care;
 - better use of existing MBS items;
 - continuity of care, care coordination and integration within the health system; and
 - better coordination with other sectors.
- Supporting health professionals to deliver better care for people with intellectual disability.
- Improving oral health for people with intellectual disability.
- Investing in research, data and measurement to support continuing improvement.
- Improving emergency preparedness and responses to consider the needs of people with intellectual disability.

The Australian Government has dedicated funding to the following priorities of the roadmap:

- Primary Care Enhancement Program for People with Intellectual Disability;
- Improvements to the implementation of annual health assessments for people with intellectual disability;
- Curriculum development in intellectual disability health; and,
- Scope and co-design of a National Centre of Excellence in Intellectual Disability Health.

In working towards the Roadmap's objective of supporting health professionals to deliver quality care for people with intellectual disability, the DHAC has developed the Intellectual Disability Health Capability Framework (the Framework). The Framework aims to equip future health professionals with the required core capabilities to provide quality health care to people with intellectual disability. The Framework also includes tailored guidance for accreditation authorities and self-regulating health professions to support the integration of the Framework into accreditation standards.

The Public Advocate looks forward to the rollout of more initiatives under the Roadmap that will address the health inequities faced by people with intellectual disability.

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

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

Since 2020-21, significant work has been undertaken by Queensland Health (including the Long-Stay Rapid Response Team) to reduce the number of long-stay patients residing in health facilities.

Based on figures supplied by Queensland Health regarding the activities of its Long-Stay Rapid Response Team, in the period between 1 July 2023 and 30 June 2024:

- 238 long stay younger patients (under 65 years) were discharged from Queensland Health facilities; and
- 65 long stay older patients were discharged from Queensland Health facilities.

However, as of 27 May 2024, 309 long-stay younger patients and 704 long-stay older patients remained in Queensland Health facilities awaiting discharge to appropriate accommodation in the community.

Queensland Health has also recently introduced interim care facilities, which include places like purchased residential aged care beds, hotels, community accommodation, private hospitals and virtual wards. As of 27 May 2024 a further 204 patients were residing in interim care.

Discharge barriers continue to be related to, for younger patients, NDIS plan approval and accommodation delays; while for older patients the unavailability of residential aged care facility places can delay discharge.¹⁸

¹⁸ Letter from Ms Peta Bryant, Deputy Director-General, Strategy Policy and Reform, Queensland Health, to Dr John Chesterman, Public Advocate, 26 August 2024.



While welcoming the efforts by state government agencies and other agencies (like the NDIS), the Public Advocate continues to have concerns regarding the number of patients remaining in health facilities, including interim care arrangements, as well as about the facilitation of appropriate and sustainable discharge solutions.

The Public Advocate will continue to liaise with Queensland Health and other appropriate agencies to address these issues and work towards sustainable solutions to facilitate the safe discharge of people with disability from hospital and interim care environments back into the community.

Forensic Disability Service (FDS)

The FDS is a purpose-built, medium security residential and treatment facility that can accommodate and provide care for up to 10 people who are subject to a Forensic Order (Disability) under the *Mental Health Act 2016* (Qld). The service was established and operates under the *Forensic Disability Act 2011* (Qld) and is managed by DCSSDS.

The FDS was established following concerns raised in two separate reviews, which identified the need for a more appropriate model of care for people with intellectual disability or cognitive impairment who are charged with criminal offences and found to be of unsound mind or unfit for trial. The FDS was intended to provide a specialised model of care for this cohort of people, including programs to assist FDS clients with their habilitation and rehabilitation.

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

During 2023-24, two clients who were detained during the 2022-23 financial year were transferred out of the facility. One new client arrived at the FDS in 2023-24, making a total of four people detained by the service as of 30 June 2024.¹⁹

Clients in the FDS undergo rehabilitation and habilitation programs to transition out of the facility into suitable and safe accommodation. Each undertakes a variety of programs and receives assistance to be linked to appropriate services, including the NDIS, so that appropriate supports are in place to facilitate their move back into the community over time.

While the FDS can provide services for up to ten clients, the vast majority of people under Forensic Orders (Disability) – who currently number more than 100 – are managed by Authorised Mental Health Services (AMHS), despite not having treatable mental illnesses. A series of reports dating back to 2018 have called for governance and operational reforms to provide more appropriate services and accommodation for these clients, which the Public Advocate continues to support.

Disability advocacy funding

Disability advocacy seeks to ensure that all people with disability can be included in the social, civic, and economic life of their community.²⁰ Advocacy support helps people to understand that they have rights, helps them to realise these rights, and promotes positive societal change.

Following a period of instability in terms of the funding provided towards advocacy at a state level, the Disability Advocacy Program was developed in 2022.

The Program delivers (via non-government organisations):

¹⁹ Letter from Deidre Mulkerin, Director-General, Department of Child Safety, Seniors and Disability Services, to Dr Chesterman, Public Advocate, 18 July 2024.

²⁰ Department of Health and Human Services (Vic), *Victorian disability advocacy futures plan 2018-2020*, Victorian Government, Melbourne 2018.



- a centralised advocacy referral service called Disability Advocacy Pathways (Pathways). This service, operated by QAI, is 'an information and referral service that assists Queenslanders with disability, their family, friends, and carers to find advocacy services to suit their needs and location'.²¹
- specialist services providing individual advocacy support for Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, and children and young people with disability; and
- regionally delivered individual advocacy support to people with disability throughout Queensland.²²

The Queensland Government also announced an additional round of funding for organisations providing advocacy under the Queensland Disability Advocacy Program in February 2024.²³

In terms of the operation of the centralised advocacy service funded under the program, over the 2023-24 financial year, Pathways received 988 enquiries.²⁴ These enquiries resulted in Pathways making 857 simple referrals (providing a person with information and contact details for a suitable organisation for independent contact) and 45 facilitated referrals, where connections to a service are made directly, through the completion of an intake process on behalf of a person.

People contacted Pathways about a range of issues, the most common being NDIS access (14%), NDIS plan reviews (11%), legal issues (9%), and housing and homelessness (9%).²⁵

The most common types of disability that people who contacted the service identified with included psychosocial disability (13%), autism spectrum disorder (11%), physical disability (11%), and intellectual disability (6%).²⁶

National Health and Medical Research Council – Research Guidelines

In July 2023, the National Health and Medical Research Council conducted a public consultation to assist in revising a part of the National Statement on Ethical Conduct in Human Research.

The Public Advocate's submission to this consultation recommended that more contemporary approaches regarding people with disability should be incorporated into the statement, including supported decision-making, replacing the term 'best interests' with 'health and wellbeing', as well as improving communication and the understanding of people with disability in relation to concepts such as consent and withdrawing it.

The submission also referred to the recommendations made in the publication that was co-authored by the Public Advocate, Yuu Matsuyama (Senior Legal Officer at the Office of the Public Advocate), and Professor Shih-Ning Then (an academic at the University of Queensland) which was published in the *Journal of Law & Medicine*.²⁷ This publication explored the current legal and ethical requirements relating to the involvement of adults with cognitive disability in research, with a particular focus on the legislative frameworks in Queensland and Victoria. The article outlines several recommendations for both legal and ethical guidance reform, including promoting mechanisms where adults with impaired decision-making ability can determine for themselves whether to participate in research, and developing consistent and clear legal requirements concerning research that involves adults with impaired decision-making ability.

²¹ Disability Advocacy Pathways, *About Pathways*, <<https://disabilitypathways.org.au/>>, 2022.

²² Queensland Government, *Advocacy Supports*, <<https://www.qld.gov.au/disability/legal-and-rights/advocacy#:~:text=The%20Queensland%20Disability%20Advocacy%20Program,to%20understand%20their%20rights>>, 31 January 2022.

²³ C. Mullen (Minister for Child Safety, Minister for Seniors and Disability Services and Minister for Multicultural Affairs), *\$1.6 million boost for Queensland disability advocacy*, media statement, The State of Queensland, 7 February 2024.

²⁴ Letter from Queensland Advocacy for Inclusion (QAI), to Dr John Chesterman, Public Advocate, 23 August 2024.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Then, S., Chesterman, J., and Matsuyama Y., 'Supporting the Involvement of Adults with Cognitive Disabilities in Research: The Need for Reform', *Journal of Law and Medicine*, vol. 30, no. 2, July 2023.



Supported decision-making

The concept of supporting people to make their own decisions is not new. We all need assistance at times to make decisions, whether those decisions are about our health, where we live, or what we buy.

Since Australia ratified the United Nations *Convention on the Rights of Persons with Disabilities* (UNCPRD) in 2008, there have been many reports, from authors including the Australian Law Reform Commission, the Disability Royal Commission and the NDIA, all recommending that Australia implement legislative, policy and procedural reforms to facilitate a reduction in the use of substitute decision makers in favour of people being supported to make their own decisions.

Over the past decade the Public Advocate has been a strong proponent of supported decision-making, advocating for its use instead of, or alongside, substitute decision-making to ensure that adults with disability can maintain control over their lives and express their wishes and preferences.

During 2023-24, in addition to promoting the rights of people with impaired decision-making ability to be supported to make their own decisions in various submissions to government agencies considering reforms, the Public Advocate:

- Published *Expanding Horizons: Examples of Supported Decision Making in Queensland*, which tells the story of the way a number of Queensland agencies are bringing to life supported decision-making in practice.
- Continued to monitor progress on a funded project being undertaken by Multicap (a Queensland-based disability service organisation), which is working with a number of Public Guardian clients to improve their supported decision-making capability. It is anticipated that this project will contribute to the sector's understanding and application of processes that may reduce the need for guardianship and other forms of substitute decision-making in the future.

Contribution to whole-of-government initiatives

National Autism Strategy

In September 2023, the Australian Senate Committee on Autism recommended the development of a National Autism Strategy. DHAC subsequently released a discussion paper seeking input from the public about the content of a National Autism Strategy (the Strategy) and later a draft of the Strategy was distributed for feedback.

The Public Advocate provided submissions to both consultations, endorsing the key outcome areas, namely: social and economic inclusion; diagnosis, supports and services; and health and mental health. The Public Advocate further recommended that specific provision be made for supported decision-making as a tool to promote and safeguard the rights, interests and opportunities of people with Autism.

Following feedback received through the public consultation process, the draft Strategy will be further refined, and it is expected the final Strategy will be presented to Government by the end of 2024.

Australia's Disability Strategy 2021-31

The Commonwealth Government's response to the Disability Royal Commission's final report and recommendations, released on 31 July 2024 (noted previously), included a commitment to the revision and updating of Australia's Disability Strategy. This review will have the objective of strengthening the strategy as a 'key driver in delivering national change in response to the Disability Royal Commission'.²⁸

The Public Advocate looks forward to being involved in the consultation processes associated with a review of this strategy.

²⁸ Australian Government, *Australian Government Response to the Disability Royal Commission*, p. 29, July 2024, Canberra.



Queensland's Disability Plan 2022-2027: Together a better Queensland (QDP)

Similar to the Commonwealth Government, the Queensland Government, in its response to the Disability Royal Commission, committed to reviewing and updating the 2022-27 QDP. This review and update is expected to be undertaken once the revision of Australia's Disability Strategy is finalised.²⁹

The Public Advocate acknowledges the Queensland Government's commitment to a co-design process for the review of the plan, to ensure that the lived experiences of Queenslanders with disability are considered. He is looking forward to contributing to the plan's review.

²⁹ Queensland Government, *Queensland Government Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, July 2024, Brisbane.



Older people

Aged Care Structural Reforms arising from the Royal Commission into Aged Care Quality and Safety

During 2023-24, the Public Advocate responded to Australian Government-led consultations related to:

- the new Aged Care Act; and,
- the Aged Care Data and Digital Strategy.

The development of a new Aged Care Act was a key recommendation of the Royal Commission into Aged Care Quality and Safety that concluded in 2021.

According to DHAC, the new Aged Care Act aims to 'improve the ways services are delivered to older people in their homes, community settings and approved residential aged care homes'.³⁰

It will:

- outline the rights of older people who are seeking and accessing aged care services;
- create a single-entry point, with clear eligibility requirements;
- include a fair, culturally safe single assessment framework;
- support the delivery of aged care services;
- establish new system oversight and accountability arrangements;
- increase provider accountability through a new regulatory model; and,
- strengthen the aged care regulator.³¹

In February 2024, the Public Advocate participated in the consultation program associated with the exposure draft of the new Aged Care Act.

In his submission, the Public Advocate highlighted a number of issues related to the exposure draft including:

- Decision-making – where the Public Advocate raised a number of concerns related to the system of representatives and supporters proposed in the Act and how they would interact with existing state and territory guardianship and related decision-making laws and practices.
- Restrictive practices – noting that the Act should require restrictive practices to only be used where they are authorised according to the applicable law of the state or territory in which the care recipient is provided with aged care services. In the Public Advocate's view, this would then allow attention to be focused on the adequacy of existing authorisation processes available in each jurisdiction, and would ideally involve a move (in Queensland) to a senior practitioner authorisation model similar to that currently proposed for disability services (see Disability Services section of this report).
- Complaints mechanisms – the Public Advocate noted that the draft exposure Bill did not address issues associated with the accessibility of complaint mechanisms, particularly for those recipients of aged care services with cognitive disabilities like dementia. Here, he noted the importance of Community Visitor Schemes to improve accessibility and safeguarding for those unable or unwilling to make complaints or register incidents experienced while receiving aged care services.

The Public Advocate also noted that the exposure draft did not include the establishment of an independent Aged Care Quality and Safety Authority as recommended by the Royal Commission into Aged Care Quality and Safety (Recommendation 10).³² Instead, complaints will continue to be addressed by the Aged Care Quality and Safety Commission. In the Public Advocate's view, this has the potential to

³⁰ Australian Department of Health and Aged Care, *About the new Aged Care Act*, <<https://www.health.gov.au/our-work/aged-care-act/about>>, 14 June 2024.

³¹ Ibid.

³² Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect*, List of recommendations, p. 216, 1 March 2021, Canberra.



jeopardise the perceived independence of the complaints system and may inhibit people from complaining about services.

The new Aged Care Act is expected to be passed by the Australian Parliament prior to the end of 2024, with a commencement date of July 2025.

During 2023-24, the Public Advocate also prepared a submission associated with the consultation process for the Aged Care Data and Digital Strategy.

In this submission, the Public Advocate recommended that DHAC consider the following in the strategy:

- Human rights – articulating the rights of older people and how the strategy will protect those rights, inclusive of the Charter of Aged Care Rights.³³
- Technological barriers – considering the needs of older people who may not be comfortable relying on digital technology to engage with the aged care system and would prefer a more personalised approach. The Public Advocate acknowledges that the strategy currently includes reference to the digital strategy not proposing to 'force' digital adoption, however notes that it does not detail how the digital platform will co-exist with existing personalised options for accessing aged care services.
- Information sharing and supported decision-making – in this area the Public Advocate specifically notes the importance of a supported decision-making approach to be implemented when obtaining the consent of people with impaired decision-making ability to share their personal information, and requests that information be provided in the strategy as to how this can be implemented.

The Department of Health and Aged Care's Aged Care Data and Digital Strategy 2024-2029 was released in July 2024.³⁴

The strategy does include references to the Aged Care Charter of Rights, a commitment to digital methods being only one form of access to care services and supports, and the importance of consent procedures to uphold the privacy of individuals interacting with a digital system.

Use of restrictive practices in residential aged care

The unauthorised use of restrictive practices in residential aged care has been an ongoing issue for the Public Advocate, highlighted in several systemic reports, media releases, position statements and advocacy activities since 2016.

Following his comments made during the consultation phase associated with the new Aged Care Act, the Public Advocate has continued to advocate for further reform in this area.

The Public Advocate's preferred model for the authorisation of restrictive practices is known as a senior practitioner model, which operates using authorisation rather than consent.

During 2023-24, the Public Advocate published two articles regarding the use of restrictive practices in residential aged care, calling for the adoption of a senior practitioner authorisation model.³⁵ Both articles were published in the Australian Ageing Agenda, an online independent service that produces a bi-monthly magazine and news website for people who work in or around the broad aged services and retirement living sectors in Australia.

³³ Australian Aged Care Quality and Safety Commission, *Charter of Aged Care Rights*, <<https://www.agedcarequality.gov.au/older-australians/your-rights/charter-aged-care-rights>>, n.d.

³⁴ Australian Department of Health and Aged Care, *Aged Care Data and Digital Strategy – Driving better care and leading a sustainable and productive care and support economy 2024-2029*, <https://www.health.gov.au/sites/default/files/2024-07/aged-care-data-and-digital-strategy-2024-2029_0_0.pdf>, 4 July 2024.

³⁵ Chesterman, J., 'What needs to happen significantly reduce restrictive practice use in Australia's aged care homes?', *Australian Ageing Agenda* magazine (subscription service), July-August 2023, p. 20, and 'More work needed on aged care bill', *Australian Ageing Agenda*, <<https://www.australianageingagenda.com.au/executive/more-work-needed-on-aged-care-bill/>>, 22 January 2024 (a briefer version was also published in the *Australian Ageing Agenda* magazine, January-February 2024, p.17).



As noted in the Disability section of this report, a senior practitioner model for the authorisation of restrictive practices is currently being considered by the Queensland Government for the state's disability sector, however it has yet to be examined as an option for aged care services.

Elder Abuse Forum

On 9 November 2023, the Public Advocate, in conjunction with Aged and Disability Advocacy Australia (ADA Australia), Caxton Legal Centre and DCSSDS, hosted the *2023 Elder Abuse Forum – Data, Practice, Reform and Connections* at Parliament House in Brisbane.

The forum brought together advocates, service providers, and community and legal sector representatives involved in elder abuse policy or practice.

Key speakers on the day included the Hon. Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, who opened the event, and representatives from a range of government agencies and statutory authorities, including the Queensland Police Service, the Office of the Public Guardian, the Australian Institute of Family Studies and DCSSDS.

More than 200 representatives attended the event, either in person or online, making it one of the largest gatherings of those involved in elder abuse policy or practice in Queensland during 2023-24.

Compass podcast – Enduring Powers of Attorney

The national website 'Compass' is an initiative of Elder Abuse Action Australia, with funding provided by the Australian Attorney-General's Department as a component of the National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023.

The website is designed to 'help older Australians navigate the complex issue of elder abuse and to guide action to end the problem'.³⁶

In early 2024, the Public Advocate was invited to take part in a podcast series, funded by Compass, to develop content for the website on subjects including ageism, elder abuse, health and wellbeing, isolation, guardianships, estate planning and advance care directives.

The Public Advocate's podcast interview focussed on Enduring Powers of Attorney, where he discussed:

- What an Enduring Power of Attorney is.
- How you can make a good one that is safe and effective.
- Choosing the right attorney.

He also provided information on how to create this document inexpensively, the role of an attorney, and how decision-making capacity is determined.

Social isolation and loneliness

The Queensland Parliamentary Inquiry into Social Isolation and Loneliness was completed in December 2021. This Inquiry contained a series of recommendations aimed at increasing the community's capacity to address social isolation and loneliness, including the development of a ten-year strategy by the Queensland Government, designed to identify changes to infrastructure, digital access and inclusion and other socio-economic factors (like housing) that are required to address this issue across communities.

The Public Advocate is currently exploring the prevalence and impact of social isolation and loneliness on Queenslanders with impaired decision-making ability. He published a paper on this topic, *The geography of loneliness*, in conjunction with Ilan Wiesel, on 1 March 2024.³⁷

³⁶ Elder Abuse Action Australia, *About Compass*, <<https://www.compass.info/about/#section-what-is-compass>>, 2024.

³⁷ Chesterman, J., and Wiesel, I., 'The geography of loneliness', *Eureka Street*, 1 March 2024.



It is anticipated that he will be involved in initiatives and projects during 2024-25 and beyond to facilitate further reforms in this area.

Contribution to whole-of-government initiatives

National Plan to Respond to the Abuse of Older Australians

The first National Plan to Respond to the Abuse of Older Australians was developed for the period from 2019 to 2023.

Throughout the life of this plan, the Public Advocate's work that contributed to the achievement of plan goals included:

- Advocating on behalf of older persons with impaired decision-making ability through consultation with key stakeholders; this involved participation in various committees, reference groups, forums and conferences aimed at addressing elder abuse.
- Advocating for improved legislation, policies, service standards and care concerning older Australians with impaired decision-making ability.
- Continuing to monitor the legislative, policy and practice aspects of Queensland's guardianship and administration system.
- Advocating for the national harmonisation of financial enduring powers of attorney legislation through the Commonwealth Attorney-General's Department's Stakeholder Reference Group – Enduring powers of attorney reform.

During 2023-24, the implementation of the National Plan was independently evaluated by the Australian Institute of Family Studies, which found that the plan has been a 'valuable mechanism for uniting governments, agencies and organisations towards the common goal of responding to the abuse of older people in Australia'.³⁸

According to a media statement released by the Hon. Mark Dreyfus KC MP, Australian Attorney-General on 12 July 2024:³⁹

The evaluation highlights a range of important achievements under the National Plan, including the delivery of Australia's first National Elder Abuse Prevalence Study, funding of innovative service responses, and a range of awareness raising initiatives.

The evaluation finds more work is needed to build on these efforts, including a greater focus on prevention and early intervention activities, and on the needs of our diverse older population.

Substantial progress has been made across Commonwealth, state and territory governments on developing the next National Plan. This work is being closely informed by the evaluation findings, and input from the community and sector.

The Public Advocate looks forward to contributing to the development and implementation of the next National Plan.

³⁸ Australian Institute of Family Studies and National Ageing Research Institute, *Evaluation of the National Plan to Respond to the Abuse of Older Australians Final Report*, p. 4, July 2024.

³⁹ M Dreyfus (Australian Attorney-General), *Release of the independent evaluation of the National Plan to Respond to the Abuse of Older Australians 2019-2023*, Parliament House, Canberra, 12 July 2024.



Health

Use of restrictive practices in health care settings

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

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

Queensland's *Guardianship and Administration Act 2000* and the *Disability Services Act 2006* regulate the use of restrictive practices in relation to people with disability. The *Mental Health Act 2016* also includes limited restrictive practice provisions which apply to people detained under that Act. There is no such regulation or legal framework that applies to the broader health system.

The Public Advocate will continue to work with Queensland Health regarding potential legislative and consequent policy responses to authorise the use of restrictive practices in health care settings across Queensland.

As noted in the section of this report addressing restrictive practices in disability settings, the senior practitioner authorisation model for the use of restrictive practices could be employed in health care settings across Queensland.

Mental health

The Chief Psychiatrist

Under Section 26 of the *Mental Health Act 2016* (Qld), the Chief Psychiatrist's functions are to protect the rights of patients and make policy and practice guidelines for AMHSs. The Chief Psychiatrist also investigates, when required, matters or incidents involving involuntary mental health patients.

The Public Advocate meets with the Chief Psychiatrist regularly to discuss concerns relating to the operation of the involuntary mental health system. Topics addressed include: processes employed to admit patients to AMHSs, including the use of substitute decision-makers; the treatment and care of involuntary patients and the upholding of their rights; and the conditions experienced in mental health units in Queensland hospitals.

The Public Advocate and the Chief Psychiatrist enjoy a positive dialogue and have continued, during 2023-24, to work through issues relating to the rights and interests of patients in AMHSs, including critical systemic changes related to the recommendations included in the Public Advocate's acute mental health system review released in 2022 – *Better Pathways: Improving Queensland's delivery of acute mental health services*.

Review of Chief Psychiatrist policies

The Chief Psychiatrist makes policies under the *Mental Health Act 2016* outlining how certain legislative requirements under the *Mental Health Act* are to be operationalised. In 2023, the Chief Psychiatrist commenced a policy review project aiming to review all current Chief Psychiatrist policies over the next three years.

The Public Advocate has been involved in the consultation process associated with the review of some of these policies during 2023-24.



Key recommendations made by the Public Advocate in response to the revised policies related primarily to policies ideally including a very clear statement of patient rights, and the need to ensure that the policies and associated materials can be readily understood by patients and their supporters.

Mental Health Review Tribunal (MHRT)

Recording of proceedings

The MHRT commenced audio recordings of its proceedings on 15 November 2023.

The introduction of audio recordings represents a significant move forward for the Tribunal which, prior to 2023-24, relied only on handwritten or typed notes made by Tribunal panel members and the statement of reasons, the document explaining why the MHRT made a decision at a particular proceeding.⁴⁰

The MHRT has now released two information sheets associated with the recording of hearings, which provide details regarding why recordings are made of proceedings, who they will be made available to, and how they can be requested, along with confidentiality provisions.

After an extended period of implementation, the Public Advocate welcomes the introduction of audio recordings, which will contribute to ensuring fairness of process and accountability to those who are subject to hearings and orders.

Access and Equity Project

In August 2023, the MHRT called for submissions on its Access and Equity project to increase legal and non-legal advocacy supports to persons appearing before the MHRT and appeals before the Mental Health Court. This phase of the project sought to identify the current supports, options and needs, as well as understanding current funding arrangements, learnings from those arrangements and present unmet demand for supports.

The Public Advocate submitted that there are a number of barriers facing people with impaired decision-making ability accessing advocacy supports when organising to appear before the MHRT.

These barriers include:

- a limited capacity for patients to access legal advocacy;
- specifications regarding who patients can have present for support during hearings;
- patients being unaware of certain rights that are available to them before and during hearings;
- communication with patients regarding hearings potentially being made available via non-accessible avenues; and,
- issues around hearing participation, including limited time allocations and patients having a limited understanding of the role and functions of the MHRT.

Standards for safe spaces

The Australian Commission on Safety and Quality in Health Care invited submissions regarding the safety and quality priorities for the development of standards of safe spaces in August 2023. The Commission sought information about what makes a safe and high-quality safe space.

The Public Advocate submitted information to this consultation based on his report *Better Pathways: Improving Queensland's delivery of acute mental health services*. This included a recommendation to extend Queensland Health's Crisis Support Spaces program to provide a seven day a week service, the ability of GPs, the Queensland Ambulance Service and patients to refer to the program, the creation of home-like, safe and calming environments, and a call for best practice crisis and stabilisation services to be delivered by a combined peer lived experience and clinical workforce.

⁴⁰ Mental Health Review Tribunal Queensland, *Electronic Audio Recording*, <<https://www.mhrt.qld.gov.au/information-about/electronic-audio-recording>>, 8 April 2024.



Law and justice

Review of the *Anti-Discrimination Act 1991* (Qld)

In March 2024, DJAG sought feedback to modernise Queensland's anti-discrimination laws. This followed a previous report prepared by the Queensland Human Rights Commission in 2022.

The *Anti-Discrimination Act 1991* has not been subject to significant changes since its inception over 30 years ago, and the Public Advocate supported the initiative to update the legislation.

The Public Advocate's submission regarding the Act suggested additional improvements to certain aspects of the draft Bill that was put forward, such as the definition of 'disability' and 'reasonable accommodation', as well as reconsidering how the Act should deal with people with a 'legal incapacity.'

Review of the *Human Rights Act 2019* (Qld)

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

In June 2024, the Queensland Government commissioned an independent review of the *Human Rights Act 2019* to assess its effectiveness after the first four years of the Act's operation. The review examined how effective the Act's current provisions are and any issues that have arisen in the way it operates.

The Public Advocate made a submission suggesting that further rights that realise the objectives of the UNCRPD⁴¹ should be included in the Act. It was further submitted that the concept of a right to participate should also be included, where there should be an obligation on government entities to ensure participation in public life by all people, including people with disability.

Section 114A of the *Guardianship and Administration Act 2000* (Qld)

In August 2022, the Public Advocate released the paper; *Public Accountability, Private Lives: Reconsidering the Queensland guardianship system's confidentiality requirements*, where he called for Section 114A of the *Guardianship and Administration Act* to be repealed. Section 114A currently prohibits an adult from identifying themselves and speaking about their experiences with the guardianship and administration system unless QCAT has given permission.

The Disability Royal Commission examined laws across Australia (including Section 114A) regarding restrictions on the disclosure or publishing of personal information about people with disability who are subject to guardianship and administration applications and orders.

The Disability Royal Commission noted the Public Advocate's recommendation in its final report to the Australian Government. It also included a recommendation that states and territories amend their guardianship and administration laws to repeal provisions prohibiting publication of material identifying a party to the proceedings as the default position, and instead simply empower the tribunal to make an order prohibiting the publication of identifying information if it is justified.⁴²

⁴¹ Opened for signature 30 March 2007, [2008] ATS 12 (entered into force 3 May 2008).

⁴² Recommendation 6.12, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.



In its response to the Disability Royal Commission, released in July 2024, the Queensland government accepted this recommendation in principle, noting that it would, in consultation with key stakeholders, 'explore options to implement the recommendation in the future'.⁴³

Other legislation

The Public Advocate also made submissions and appeared at numerous public hearings associated with the passage of other legislation through the Queensland Parliament during 2023-24.

This legislation included:

- Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (October 2023): The Public Advocate provided a submission to the parliamentary inquiry associated with this bill which detailed his concerns regarding how the new 'safeguarding provision' contained in the Bill regarding affirmative consent may create complexities for people with disability including those who are victims of this type of crime.
- Information Privacy and Other Legislation Amendment Bill 2023 (October 2023): The Public Advocate's submission noted that the new Bill should be accompanied by accessible material that can be easily understood, to improve the ability for any person to learn how the new right to information framework affects them.
- *Succession Act 1981* (October 2023): A review of the *Succession Act* was conducted through a Public Policy Paper process. The Public Advocate made submissions regarding the potential unintended consequences that may arise with the proposed expansion of family provision applications included in the paper, and highlighted other issues regarding the provision of notices to potential applicants who may have impaired decision-making ability.
- Health and Other Legislation Amendment Bill (No. 2) 2023 (December 2023): The Public Advocate's submission drew attention to potential issues that may arise with the proposed expansion enabling evidence from the Mental Health Court to be used in other settings, and whether this may lead to unintended consequences for people who have been subject to the processes associated with the implementation of the *Mental Health Act 2016*.
- Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (March 2024): The Public Advocate submitted that ongoing changes to the Criminal Code are necessary to decriminalise relationships for people with impaired decision-making ability, including a review of Section 216 of the *Criminal Code 1899*.
- Victims' Commissioner and Sexual Violence Review Board Bill 2024 (March 2024): The Public Advocate suggested that there should be a person with lived experience of disability on the Sexual Violence Review Board, noting the overrepresentation of women with disability as victims of crime.
- Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (April 2024): The Public Advocate submitted that 'special witness' provisions as included in the Bill should be further expanded to allow witnesses with impaired decision-making ability to be able to give evidence in safer settings during proceedings for any offence.
- Trusts Bill 2024 (December 2023 and June 2024): The Public Advocate made a number of submissions on the Trusts Bill, with concerns raised around the proposed change to allow administrators to appoint a new trustee, including its potential incompatibility with the *Guardianship and Administration Act 2000*.

Legal interventions

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

In the Public Advocate's 2022-23 Annual Report, it was noted that the Public Advocate was involved in a matter where the appointment of a guardian for restrictive practices was sought for a person residing in an

⁴³ Queensland Government, *Queensland Government Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, p. 33, July 2024, Brisbane.



aged care facility. At the conclusion of this hearing, the Tribunal member appointed a guardian to make restrictive practices decisions for the person as a 'health matter'.

This initial decision was made prior to another matter in which the Public Advocate was involved being decided. In this case, the tribunal decided that restrictive practices decisions needed to be made as a 'personal matter' rather than a 'health matter'.⁴⁴

With this in mind, in November 2023 the Tribunal agreed, in the original matter, where restrictive practice decisions were considered to be health matters, that the submissions from the Public Advocate and the representatives of the adult should be followed, meaning that the restrictive practices guardian now makes decisions for the adult as a personal rather than health matter.⁴⁵

In another case, the Public Advocate was invited to make an information request by QCAT regarding a case with a novel legal question involving the guardianship and administration system. The issue involved whether an administrator appointed by the Tribunal was able to request a copy of a will written by the adult for whom they are the administrator, from a third party that held a copy of that will.

The Public Advocate intervened on the basis that this represented a legal issue that can potentially affect all people under administration orders. The Public Advocate's submission was that an administrator would have the right to request a copy of the will, as it would contain the views, wishes and preferences of the adult in relation to their financial affairs.

The Tribunal ultimately agreed with the Public Advocate's submissions.

Limitation orders

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

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

In making a limitation order, QCAT must balance the protection of people and information from disclosure with the fundamental principle that a legal process should be open and transparent.

QCAT is also required, under the *Guardianship and Administration Act*, to provide the Public Advocate with a copy of the limitation order decision and its reason for making the order. The Public Advocate is then able to report on any systemic issues based on the information provided by the tribunal.

After releasing his first report on limitation orders during 2021-22, the Public Advocate has continued to monitor limitation orders received from QCAT throughout 2023-24.

⁴⁴ NJ [2022] QCAT 283

⁴⁵ DBD [2023] QCATA 160



Guardianship and Administration



Guardianship and administration

During 2023-24, the Public Advocate continued to monitor the operation of legislation, policy and practice concerning Queensland's guardianship and administration system and contributed to systemic improvements through working with DJAG, the Public Guardian, the Public Trustee and QCAT.

Confidentiality in the guardianship system

As noted in the law and justice section of this report, the Public Advocate continued his call for the repeal of Section 114A of the *Guardianship and Administration Act*, which currently prohibits an adult from identifying themselves and speaking about their experiences with QCAT and the guardianship system unless Tribunal permission has been given.

In the Public Advocate's opinion, this approach disempowers the individual and can potentially be considered an outdated and paternalistic approach to this issue.

His recommendation is currently under consideration by the Queensland Government and may be considered as a component of its response to the Disability Royal Commission.

Enduring documents

Enduring powers of attorney law reform and a national register

The harmonisation of enduring financial powers of attorney laws has been an ongoing issue in Australia for decades, with the challenge of recognising interstate enduring powers of attorney on the agenda of the Standing Committee (now Council) of Attorneys-General as far back as 2000.

Harmonisation has been recognised as a key elder abuse reform measure, considered in both the Australian Law Reform Commission's Elder Abuse report in 2017 and the National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023.

In July 2023, the Public Advocate released a draft model financial enduring powers of attorney law, with the imprimatur of the Queensland Law Society, the Law Institute of Victoria, the Victorian Public Advocate and the then Age Discrimination Commissioner.

As noted in the preliminary section of the Model Law document, the benefits of harmonised financial enduring powers of attorney laws include:

- Greater knowledge and certainty throughout the country on enduring powers of attorney creation, usage and safeguards.
- The possibility of meaningful national education on enduring powers of attorney, including on the responsibilities of attorneys.
- Increased consistency and efficiency in the practices and expectations of institutions which deal with enduring powers of attorney (such as banks and other financial services providers).
- The forthcoming national register of enduring powers of attorney (which is currently being developed) would be optimally effective.⁴⁶

The Public Advocate also responded to a consultation paper prepared by the Commonwealth Attorney-General's Department – *Achieving greater consistency in laws for financial enduring powers of attorney* – which made multiple references to the above-mentioned model law.

In his response, the Public Advocate noted a series of issues to be addressed, using the key consideration that uniformity be achieved across jurisdictions wherever possible.

⁴⁶ A copy of the model law is available at;

< https://www.justice.qld.gov.au/__data/assets/pdf_file/0007/770794/final-qpa-model-financial-enduring-powers-of-attorney-law.pdf >.



On 27 June 2024, the Public Advocate met with the Commonwealth Attorney-General (the Hon Mark Dreyfus KC MP) to discuss enduring powers of attorney law reforms. No commitments were made at this meeting, however it did provide the time for the Public Advocate to reiterate the issues and advocate for reform.

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

In 2020-21, the previous Public Advocate (Ms Mary Burgess) finalised a project examining the Public Trustee's fees and charges levied on its financial administration clients.

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

The report identified significant concerns about the fees, charges, and practices of the Public Trustee.

Each 12 months, coinciding with the anniversary of the report being tabled in Parliament, the Public Advocate releases an implementation update, monitoring progress on the thirty-two recommendations included in the report.

The 2024 update noted:

- The operation of the Public Trustee's Advisory and Monitoring Board, established following the enactment of the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2022*. The Public Advocate has consequently met with the Board on several occasions during 2023-24.
- The development by the Public Trustee of a suite of proposed changes to its current fees and charges schedule.

The proposed changes to the Public Trustee's fees and charges schedule were open for consultation during April and May 2024.

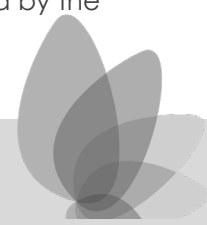
The Public Advocate prepared a submission on the proposed changes which highlighted:

- The fees and charges options presented by the Public Trustee being based on a cost-of-service model, which is unusual in the delivery of services to vulnerable people, even where some contributions are required of them.
- Fees and charges being based on, in part, frequency of client contact with the Public Trustee, which does appear to be at odds with the move towards supported decision-making practices for adults with impaired decision-making ability, which relies on more frequent, routine engagement with clients.
- The potential impact of the fees and charges options proposed on clients with modest assets (including superannuation, shares or investments) and on a fixed pension income.

Resulting from these concerns, the Public Advocate suggested that the Public Trustee consider an alternative fees and charges model based on a client's income, with consideration of their assets, as opposed to being based only on their assessable assets.

The implementation of a charging structure based partly on income would, as noted by the Public Advocate, decrease the burden placed on financial management clients with fixed incomes and modest assets, reducing the need to consider the liquidation of their assets to fund the payment of fees and charges.

It is anticipated that a revised fees and charges structure for Public Trustee clients will be considered by the Queensland Government early in the 2024-25 financial year.



Appendices



Financial summary

The Public Advocate is not a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*. Funding for the office is provided by the Queensland Government as part of the appropriation for DJAG, with the Director-General of the department being the accountable officer pursuant to the *Financial Accountability Act*. Detailed financial information relating to the operations of the department are reported in the annual report for DJAG.

A summary of office expenditure in 2023-24 is presented below.

Expenditure Item	Amount
Employee related expenses	\$914,684
Supplies and Services	\$78,635
Depreciation and Amortisation	\$2,324
Total	\$995,643

Other payments of note

The Office has continued to monitor the expenditure of a grant of \$9,900 (GST not applicable) provided to QAI in 2018-19 for the purpose of MHRT appeals and other applications under the *Mental Health Act*, for adults with impaired decision-making capacity.

Overseas travel

There was no work-related overseas travel undertaken by the Public Advocate or office staff in 2023-24.



Appendix 1: List of submissions

The following table presents a list of publicly available submissions made by the Public Advocate in 2023-24.

Date	Submitted to	Subject
August 2023	The Australian Commission on Safety and Quality in Health Care	Safe Spaces Standards Scoping Study (places where people experiencing distress can seek support from peers with lived experience in a non-clinical environment)
September 2023	DHAC	A new Aged Care Act: The Foundations (consultation paper no. 1)
September 2023	National Health and Medical Research Council	National Statement on Ethical Conduct in Human Research
October 2023	Queensland Parliament Education Employment and Training Committee (now Education, Employment, Training and Skills Committee)	Information Privacy and Other Legislation Amendment Bill 2023
October 2023	The Australian Department of Social Services	Draft National Autism Strategy
October 2023	The Australian Department of Social Services	National Housing and Homeless Plan Issues Paper
October 2023	Qld Parliament Legal Affairs and Safety Committee (now Community Safety and Legal Affairs Committee)	Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023
October 2023	Strategic Policy, DJAG	Review of the <i>Succession Act 1981</i> (Qld)
November 2023	The Australian Attorney-General's Department	Achieving consistency in laws for Financial Enduring Powers of Attorney
November 2023	DHAC	Aged Care Data and Digital Strategy
December 2023	DJAG	Trusts Bill 2024
December 2023	Queensland Health	Health Workforce Strategy
December 2023	Queensland Parliament Health and Environment Committee (now Health, Environment and Agriculture Committee)	Health and Other Legislation Amendment Bill (No.2) 2023
January 2024	Qld Parliament Community Support and Services Committee	Inquiry into the provision and regulation of supported accommodation in Queensland
January 2024	Queensland Health	Mental Health Community Support Service – Psychosocial supports consultation
February 2024	Australian Department of Health and Aged Care	New Aged Care Act



Date	Submitted to	Subject
February 2024	Queensland Health	Queensland Health guideline – Reasonable adjustments for people with disability
March 2024	Queensland Parliament Community Safety and Legal Affairs Committee	Victims' Commissioner and Sexual Violence Review Board Bill 2024
March 2024	Queensland Parliament Housing, Big Build and Manufacturing Committee	Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024
March 2024	Strategic Policy and Legislation, DJAG	Exposure draft of Anti-Discrimination Bill 2024
April 2024	Australian Parliamentary Joint Committee on Corporations and Financial Services	Inquiry into the financial services regulatory framework in relation to financial abuse
April 2024	Queensland Public Trustee	Fees and charges reform for key services
May 2024	Australian Department of Social Services	Draft National Autism Strategy (Round 2 consultation)
June 2024	Queensland Department of Justice and Attorney General	Independent Review of Queensland's <i>Human Rights Act 2019</i>
June 2024	Queensland Parliament Housing, Big Build and Manufacturing Committee	Trusts Bill 2024
June 2024	Queensland Parliament Community Safety and Legal Affairs Committee	Respect at work and Other Matters Amendment Bill 2024



Appendix 2: Speaking engagements and public hearings

Australian Medical Students' Association Convention (presenter and panel member)

Panel topic: 'Dying well: an introduction to voluntary assisted dying'

Host: Australian Medical Students' Association

7 July 2023

Interview for 'Brief Case' podcast

Host: Sarah Elke-Kraal

13 July 2023

ADA Australia Staff Training and Development Day (presenter)

Topic: 'Update on human rights systemic advocacy'

Host: ADA Australia

11 September 2023

'Beyond Homes: Queensland's Vision for Supported Living' (presenter and panel member)

Topic: 'Supported accommodation'

Host: Supported Accommodation Providers Association

26 September 2023

Australian Guardianship and Administration Council (AGAC) meeting (presenter)

Topic: 'The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability'

Host: AGAC

13 October 2023

Inquiry into the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill (oral evidence)

Legal Affairs and Safety Committee

Queensland Parliament

8 November 2023

Elder Abuse Forum: Data, Practice, Reform, Connections (host and panel facilitator)

Panel topics: 'Data and Evaluation' and 'Reform'

Host: Office of the Public Advocate in conjunction with Aged and Disability Advocacy Australia and Caxton Legal Centre

9 November 2023

Queensland Public Trustee Advisory and Monitoring Board (presenter)

Topic: 'Implementation of the recommendations from the *Preserving the financial futures of vulnerable Queenslanders* report'

Host: Queensland Public Trustee

1 December 2023

Inquiry into provision and regulation of supported accommodation in Queensland (oral evidence)

Community Support and Services Committee

Queensland Parliament

13 December 2023

DJAG Justice Portfolio end of year event (presenter)

Topic: '2023 highlights'

Host: DJAG

13 December 2023

Interview for 'We think outloud' podcast

Host: Uli Cartwright

18 December 2023

QCOSS Human Rights Network webinar (presenter)

Topic: 'Human rights and supported accommodation'

Host: QCOSS

24 January 2024



Inquiry into the Health and Other Legislation Bill (No. 2) – (oral evidence)

Health and Environment Committee
Queensland Parliament
1 February 2024

Southern Downs Elder Abuse Response Meeting (online presenter)

Topic: 'Adult safeguarding'
Host: Southern Downs Elder Abuse group
20 February 2024

Aged Care Providers Association Webinar (presenter)

Topic: 'Aged care restrictive practices'
Host: Aged Care Providers Association
27 February 2024

'Justice prescribed: achieving health outcomes through legal support' health justice symposium (panel facilitator)

Topic: 'Let's talk strategy'
Host: Caxton Legal Centre
29 February 2024

Sunshine Coast Citizen Advocacy meeting (presenter)

Topic: 'The role and work of the Public Advocate in Queensland'
Host: Sunshine Coast Citizen Advocacy
6 March 2024

'Keeping Seniors Safe in Community' (presenter)

Topic: 'The role and work of the Public Advocate in Queensland'
Host: Minjerribah Moorgumpin Seniors/Elders Gathering, Dunwich, Minjerribah (North Stradbroke Island)
15 March 2024

Interview for Compass (Elder Abuse Action Australia) podcast

Topic: Enduring Powers of Attorney
Host: Elder Abuse Action Australia
19 March 2024

Inquiry into the Victims' Commissioner and Sexual Violence Review Board Bill 2024 (oral evidence)

Community Safety and Legal Affairs Committee
Queensland Parliament
25 March 2024

Inquiry into the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (oral evidence)

Housing, Big Build and Manufacturing Committee
Queensland Parliament
26 March 2024

Queensland Public Trustee Advisory and Monitoring Board (presenter)

Topic: 'Implementation of the recommendations from the *Preserving the financial futures of vulnerable Queenslanders* report'
Host: Queensland Public Trustee
5 April 2024

Council on the Ageing (COTA) - (panel member)

Topic: 'That won't happen to me'
Host: COTA
15 April 2024

Adult Safeguarding Forum (facilitator)

Facilitator of forum
Host: Northern Territory Public Guardian and Trustee
18 April 2024

Health and Disability Interface Advisory Group meeting (online presenter)

Topic: Supported Accommodation
Host: Queensland Health
24 April 2024



'Be Heard! Speak Up!' disability forum (presenter)

Keynote presentation

Host: Cherbourg Aboriginal Shire Council
30 April 2024

Forum: After the Disability Royal Commission and NDIS Review: Disability Reform in Queensland (host, presenter and panel facilitator)

Topic: 'Implications for adult guardianship and adult safeguarding reforms'
Host: Office of the Public Advocate in conjunction with Queensland Advocacy for Inclusion, Queenslanders with Disability Network and Queensland Human Rights Commission
10 May 2024

Southern Downs Elder Abuse Response Forum (facilitator)

Host: Southern Downs Elder Abuse group
23 May 2024

Council of Australasian Tribunals 2024 National Conference (presenter)

Topic: 'Balancing risks and rights in a protective jurisdiction: Acknowledging the rights of a person with impaired decision-making capacity'
Host: Council of Australasian Tribunals
6 June 2024

Elder Abuse Action and Prevention Forum (presenter)

Topic: 'Adult Safeguarding'
Host: Aged and Disability Advocacy Australia and Caxton Legal Centre
13 June 2024

Elder Law Breakfast (presenter)

Topic: 'Elder Abuse'
Host: Queensland Law Society
14 June 2024

'Age is No Barrier' (debater)

Topic: 'Age is no barrier'
Host: COTA
25 June 2024

Policy Futures: A reform agenda (presenter – Churchill Fellowship)

Topic: 'Supporting and safeguarding at-risk adults'
Host: Churchill Trust
27 June 2024

ACT Government breakfast (presenter)

Topic: 'Supporting and safeguarding at-risk adults'
Host: ACT Government
28 June 2024



Appendix 3: Working and advisory groups

Commonwealth Attorney-General's Department Stakeholder Reference Group – Enduring powers of attorney law reform

This group is advising the Department about potential harmonisation of financial enduring powers of attorney laws and the establishment of a national register.

Australian Guardianship and Administration Council (National)

The Australian Guardianship and Administration Council (AGAC) is the national forum of Public Advocates, Public Guardians, Guardianship Tribunals, and Public Trustees or their equivalents across Australia. AGAC's biannual meetings focus on matters of mutual concern or national significance. Dr John Chesterman is currently the chairperson of AGAC, commencing in this role in October 2021.

Queensland Health – Health and Disability Interface Advisory Group

This group emerged out of the COVID-19 Working Group convened by Queensland Health during the pandemic. It consists of a range of disability service providers, government and non-government agencies who meet on a monthly basis to discuss critical issues impacting on the disability sector, with a particular focus on health-related concerns and new programs and initiatives.

Queensland Health QCAT Guardianship Program Governance Group

This group advises on the operation of the Queensland Health QCAT guardianship program.

Mental Health and Disability Legal Assistance Forum

The purpose of the group is to promote cooperation and collaboration between legal and non-legal service providers, including social, community and health services working with people with mental health issues, intellectual disability, or other cognitive impairments. Participating in this group enhances the Public Advocate's knowledge and understanding of the needs of, and the current and emerging systemic issues that affect, this vulnerable cohort.

Queensland Law Society Committees

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



DJAG Human Rights Implementation Working Group

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

Public Interest Disclosures Agency Network

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

National adult safeguarding roundtable

The National adult safeguarding roundtable brings together representatives from government and non-government organisations across Australia to discuss jurisdictional based reforms and developments being considered or implemented in response to the Australian Law Reform Commission's report, *Elder Abuse – A National Legal Response* (ALRC 131).

QCAT Guardianship stakeholder group

This group meets twice a year to discuss adult guardianship operational matters.



Appendix 4: Glossary of acronyms

AGAC	Australian Guardianship and Administration Council
ADA Australia	Aged and Disability Advocacy Australia
AMHS	Authorised Mental Health Service
CHAP	Comprehensive Health Assessment Program
CC BY	Creative Commons Attribution
DCSSDS	Department of Child Safety, Seniors and Disability Services
DHAC	Department of Health and Aged Care (Cth)
Disability Royal Commission or Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
DJAG	Department of Justice and Attorney-General
DS Act	<i>Disability Services Act 2006 (Qld)</i>
DSOA	Disability Support for Older Australians Program
FDS	Forensic Disability Service
GP	General Practitioner
MBS	Medicare Benefits Scheme
MHRT	Mental Health Review Tribunal
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
Pathways	Disability Advocacy Pathways program
PID	Public Interest Disclosure
QAI	Queensland Advocacy for Inclusion
QCAT	Queensland Civil and Administrative Tribunal



QDN	Queenslanders with Disability Network
QDP	Queensland Disability Plan
the Code	Code of Conduct for the Queensland Public Service
the Framework	The Intellectual Disability Health Capability Framework
the Roadmap	The National Roadmap for improving the Health of People with Intellectual Disability
the Strategy	The National Autism Strategy
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities



