



Systems Advocacy



In this year's Annual Report we are featuring artwork painted by people experiencing disabilities. This is in keeping with our vision – *to realise a just and inclusive society for all citizens*. It illustrates the contribution of people with disabilities to the fields of art and culture, and the importance of removing barriers which impede their equitable access to participating in the cultural life of our community. The artists are members of the Brisbane Outsider Artists Studio. Our thanks to *Access Arts Inc.* for making this possible.

'Black' by Karla Duvey

'Castles' by Tanya Darl

'Evolution' by Louis Leigh-Lucas

'Gridlock 2' by Lisa Blake

'Labyrinth' by Lisa Blake

'Over That Hill' by Stephen Corti-Griffiths

'Owl Screenprint' by Mandy Johnstone

'Sculptured Stained Glass' by Dion Halse

'Somewhere in Victoria' by Andrew Pemberton

'Somewhere Peaceful' by Lisa Blake

'Sunflowers' by Mandy Johnstone

'The Misty Moon At Night' by Dion Halse

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding the annual report, you can contact us by telephone (07) 3224 7424 or email public.advocate@justice.qld.gov.au and we will arrange an interpreter to assist in communicating the report to you.

The report is also available at www.publicadvocate.qld.gov.au

To provide feedback, a survey is available on the website.

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The Honourable Cameron Dick MP
Attorney-General and Minister for Industrial Relations
State Law Building
50 Ann Street
BRISBANE QLD 4000

Dear Attorney

I am pleased to present the Public Advocate's Annual Report for the financial year ended 30 June 2010.

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

The report provides information on the key activities of the Office of the Public Advocate for 2009–10 and a statement of our financial and operational functions for the year.

Yours sincerely



Lindsay Irons
Acting Public Advocate – Queensland

31 October 2010



'Gridlock 2' Lisa Blake

Vision

Our vision is to realise a just and inclusive society for all citizens.

Our approach

We are committed to evidence-based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes for people with impaired decision-making capacity.



Table of Contents

About the Public Advocate	4
Public Advocate's Overview	5
The changing context	8
Systems Advocacy Framework 2010–12	11
Social inclusion for people with a disability	21
Listening to the silent voices – Community Visitor Program project	26
Legal advocacy on elder abuse	31
Project priorities for 2010–2011	35
Submissions and legal interventions	36
Research partnerships	37
The Office of the Public Advocate	38



'Sculptured Stained Glass' Dion Halse

About the Public Advocate

The Office of the Public Advocate was established under Chapter 9 of the *Guardianship and Administration Act 2000* to undertake systems advocacy on behalf of adults with impaired decision-making capacity. The functions of the Public Advocate are:

- a) promoting and protecting the rights of adults with impaired capacity for a matter;
- b) promoting the protection of the adults from neglect, exploitation or abuse;
- c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- d) promoting the provision of services and facilities for the adults;
- e) monitoring and reviewing the delivery of services and facilities to the adults.

The Public Advocate is appointed by Governor in Council and is not under the control or direction of the Minister.

The work of the Public Advocate contributes to the Department of Justice and Attorney-General Strategic Plan 2010-14 (*Objective 3: The rights and interests of adults with impaired decision-making capacity, victims of crime, children and other vulnerable people are protected*) and supports the Government's *Toward Q2: Tomorrow's Queensland* ambitions of **A Fair Queensland** – supporting safe and caring communities through services that deliver justice, protect vulnerable people, increase community and workplace safety and uphold rights.

Public Advocate's Overview

The opportunity for change

The context within which statutory systems advocacy operates is changing.

This year marks the tenth anniversary of a statutory systems advocacy approach to promoting the rights of people with impaired decision-making capacity in Queensland. The Office of the Public Advocate, established under the *Guardianship and Administration Act 2000*, commenced operation in early 2000. With this anniversary is the opportunity to review the delivery of statutory systems advocacy in Queensland. There are also other reasons why this is timely.

An opportunity to advance a fresh approach to promoting the rights and autonomy of people with impaired decision-making capacity, through alignment of their interests with those of the broader community

First, the social policy environment has changed. There have been international and national developments over the past five years which commit to advancing towards a more just and fair society which is inclusive for all people. These include the United Nations Convention on the Rights of Persons with Disabilities, the Australian Government's Social Inclusion agenda, and the draft National Disability Strategy 2010–2020, anticipated to be finalised in 2010–11 (refer to page 10 for more detail).

These developments carry with them the opportunity to advance a fresh approach to promoting the rights and autonomy of people with impaired decision-making capacity, through the closer alignment of their interests with those of

the broader community. A vision for the enjoyment of mainstream social, economic and cultural resources by people with a disability throws into sharp relief their current experiences of entrenched marginalisation and disadvantage, resulting in abuse, neglect and exploitation.

Second, the government's decision to transfer the systems advocacy function to the Adult Guardian signals a change in government's expectations for the role. When implemented, this decision will mean that new partnerships will be forged, new sources of evidence will emerge, and new organisational arrangements will exist. The expectations of, and outcomes from, the statutory systems advocacy function will change. Planning is needed to position systems advocacy to operate in this new context and make use of the new opportunities for advancing a more inclusive approach to promoting the rights and interests of people with impaired decision-making capacity.

A vision for the enjoyment of mainstream social, economic and cultural resources by people with a disability

Third, the review of guardianship legislation by the Queensland Law Reform Commission may result in legislative changes to statutory systems advocacy. This suggests the need for a systems advocacy approach which can respond to a changing legislative context.

Renewing statutory systems advocacy

This report articulates a new framework for the delivery of statutory systems advocacy, developed in 2010.

We are proud of the work we have undertaken this year in developing a contemporary framework for statutory systems advocacy. This has involved an analysis of similar practice in other jurisdictions, an assessment of the emerging social policy environment, and extensive consultation with staff of the Office of the Adult Guardian.

Our new framework for systems advocacy has four principles at its core.

First, our systems advocacy is **statutory in nature**, and arises from a legislative basis. We operate within the conventions and governance structures of government, and we use the means available to government agencies to promote the rights and interests of people with impaired decision-making capacity. As such, we are guided by internal and departmental policies, best practice business processes, and clear accountability mechanisms.

Statutory in nature...grounded in knowledge and evidence...realising shared interests...strategic and forward-looking

Second, our systems advocacy derives from **knowledge** and **evidence**. Our contribution to social policy debate is linked to our capacity to analyse evidence from a range of sources, and to communicate this knowledge to the broad group of stakeholders with whom we work. One key part of this evidence base will be the experiences of people who come under the guardianship system.

Third, we advance our advocacy through the **realisation of shared interests**, and the goodwill and trust we develop with other agencies and stakeholders. Relationships are based on respect and clear protocols for engagement. New ideas are generated through the sharing of information and experience, and a commitment to dialogue with our partners. New voices are actively sought to strengthen the opportunity for change.

Fourth, our advocacy is **strategic** and **forward-looking** in nature. We contribute to the task of removing *structural* barriers which impede equitable access to mainstream goods and services for people with impaired decision-making capacity. Our early contribution to government strategic policy processes is a key function.

In line with this approach, the core values of the Office of the Public Advocate are:

Creative influence

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

Knowledge leadership

We are committed to research and analysis that informs social policy debate, to progress inclusive and sustainable responses for people with impaired decision-making capacity.

Professionalism and integrity

We work with clear purpose and commitment to systems advocacy, within a culture where accountability and respect is paramount.

The report

This report describes the activities of the Office of the Public Advocate for 2009–10 under four main headings.

1. Our work in developing a Systems Advocacy Framework 2010–2012.
2. The findings of our research in relation to the social inclusion of people with disability.
3. Our work in relation to the ‘silent voices’ of certain groups of vulnerable people through a collaborative project with the Adult Guardian to strengthen the systemic contribution of the Community Visitor Program.
4. Our work in relation to legal advocacy on the issue of elder abuse, through the publication of a joint discussion paper with the Queensland Law Society.

Finally, I wish to thank the staff for their expertise and hard work; for their commitment to the rights and interests of people with impaired decision-making capacity; and for their energy in fostering a collegiate environment within the office. I also acknowledge the many people, both within and beyond the department, for their support and advice.



Lindsay Irons
Acting Public Advocate



'Over That Hill' Stephen Corti-Griffiths

The changing context

Review, reform and renewal

On 12 March 2008, the Queensland Government announced a review of government boards and statutory bodies. The review (known as the Weller Review) took place between July 2008 and March 2009, and made recommendations on which government bodies could be abolished, kept or changed.

The Weller Review recommended that the systems advocacy function of the Public Advocate be transferred to the Adult Guardian and the Public Advocate position be abolished. It observed that *"... by being separated from the experiences of the Adult Guardian, the Public Advocate does not have sufficient access to information to amass a systemic assessment based on objective data and meet its original objectives"*.¹

The Public Advocate is advancing a contemporary, strategic direction for systems advocacy – embracing a commitment to evidence based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes

The review noted that *"If by reason of its separate structure the Public Advocate has not been able to access data and experience the necessary body of evidence to enable it to undertake its role effectively, then government and stakeholder ambitions for the role have been undersold by an organisational form ultimately that is not fit for purpose"*.²

¹ Webbe and Weller (2009). *A Public Interest Map: An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*, 142.

² *ibid* 142-3.

The Weller Review's recommendation to abolish the Public Advocate was supported by the government. The government noted that the recommendation *"... is consistent with how the role of the Public Advocate operates in some other Australian jurisdictions. The functions will continue, but will be carried out by the Adult Guardian"*.³

Prior to the Weller Review, the Queensland Law Reform Commission (QLRC) began a review of the systems of guardianship. It was tasked with examining the law in relation to the General Principles, the scope of substituted decision-making, the role of the support network, adequacy of investigative powers, health and special health matters, and other miscellaneous matters under the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*.

Consistent with the government's decision to align systems advocacy with the functions of the Adult Guardian, amendments were made to the Queensland Law Reform Commission Terms of Reference, removing the requirement to report upon the *"...adequacy of the Public Advocate's current role and functions in the guardianship system..."*. The Queensland Law Reform Commission will instead consider *"... issues to be taken into account to ensure that an independent systemic advocacy role will be maintained when the functions of the Public Advocate are transferred to the Adult Guardian"*.⁴ The report is expected to be completed in September 2010.

Future direction

Amalgamation of the functions of the Public Advocate with those of the Adult Guardian will occur following amendments to the *Guardianship and Administration Act 2000*. In the meantime the Office of the Public Advocate is advancing a contemporary, strategic direction for systems advocacy. The new direction embraces a

commitment to evidence based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes for people with impaired decision-making capacity.

The focus of our business activities for this year is captured in four key result areas:

- knowledge and evidence
- communication and influence
- advocacy and inclusion
- business processes.

Systems advocacy in a changing context

Over the past five years, the context in which statutory systems advocacy operates has fundamentally changed.

At the international level, Australia ratified the United Nations Convention on the Rights of Persons with Disabilities on 17 July 2008. The purpose of the Convention is *"to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity"*. The Convention's foundational principles include 'non discrimination', 'full and effective participation in society', 'equality of opportunity' and 'accessibility'.

At the national level, the Australian Government launched its social inclusion agenda in 2008. It established a Social Inclusion Unit in the Department of the Prime Minister and Cabinet, and a Social Inclusion Board to provide advice on how best to monitor and address issues of social inclusion.⁵

³ Queensland Government (2009), Government Response to the report *Brokering Balance: A Public Interest Map for Queensland Government Bodies - An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*

⁴ Queensland Law Reform Commission, Queensland Government, Guardianship Review

⁵ Australian Social Inclusion Board (2010) *Social Inclusion in Australia: How Australia is faring*, p.16

See for further information, Australian Government (2010) *A stronger fairer Australia, a new social inclusion strategy*: Canberra and <http://www.socialinclusion.gov.au/resources/pages/resources.aspx>.



John O'Brien (Senior Research Officer), Allison Testa (Administration Officer) and Lindsay Irons (Acting Public Advocate)

The Board identified 11 principles to promote social inclusion. The first three of these are aspirational:

- reducing disadvantage
- increasing social, civic and economic participation
- a greater voice, combined with greater responsibility.

The Australian Government's vision of a socially inclusive society is one in which all Australians feel valued and have the opportunity to participate fully in the life of our society. All Australians will have the resources, opportunities and capability to:

- learn by participating in education and training
- work by participating in employment, voluntary work and in family and caring
- engage by connecting with people and using local community resources
- have a voice so that they can influence decisions that affect them.

At the time of writing, work was also underway on a National Disability Strategy. This strategy is likely to significantly re-shape the state and federal vision for people with disabilities. Early indications are that the foundational principles will include:

- improving the responsiveness of mainstream systems

- an inclusive agenda, a responsibility which is shared by all levels of government.

The National Disability Strategy will become an important vehicle for change. It is anticipated that the Commonwealth and the states will report publicly on their progress towards achieving the government's vision for people with disability.

Our work in developing a new strategic direction for statutory systems advocacy brought us to the following conclusions:

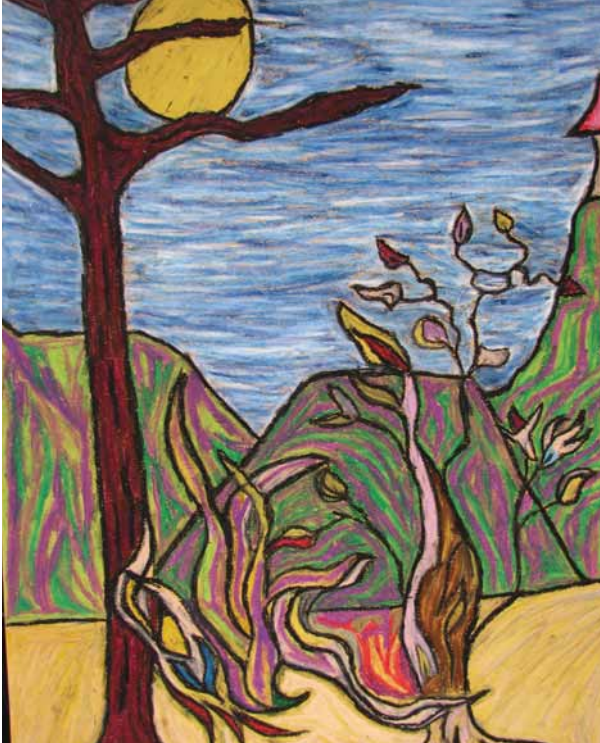
A shift in paradigm at the international and national levels

The reliance on improving people's lives through specialised service systems is giving way to a broader vision, one in which the rights and interests of vulnerable people are promoted through more equitable access to mainstream goods and services.

New challenges and opportunities for statutory systems advocacy

- *To position the promotion of rights and interests within the new social policy discourse.*
- *To make use of new opportunities for systems change across a broader range of government agencies and sectors.*
- *To advance the goal of 'whole of life' outcomes, rather than primarily service delivery outcomes.*
- *To engage with new stakeholders and audiences to improve outcomes.*
- *To promote the rights and interests of all people with impaired decision-making capacity, including those who do not receive a specialist disability service.*

This analysis of the challenges, the changing environment and the emerging expectations for future statutory systems advocacy created the foundation for our development of the Systems Advocacy Framework 2010-2012.

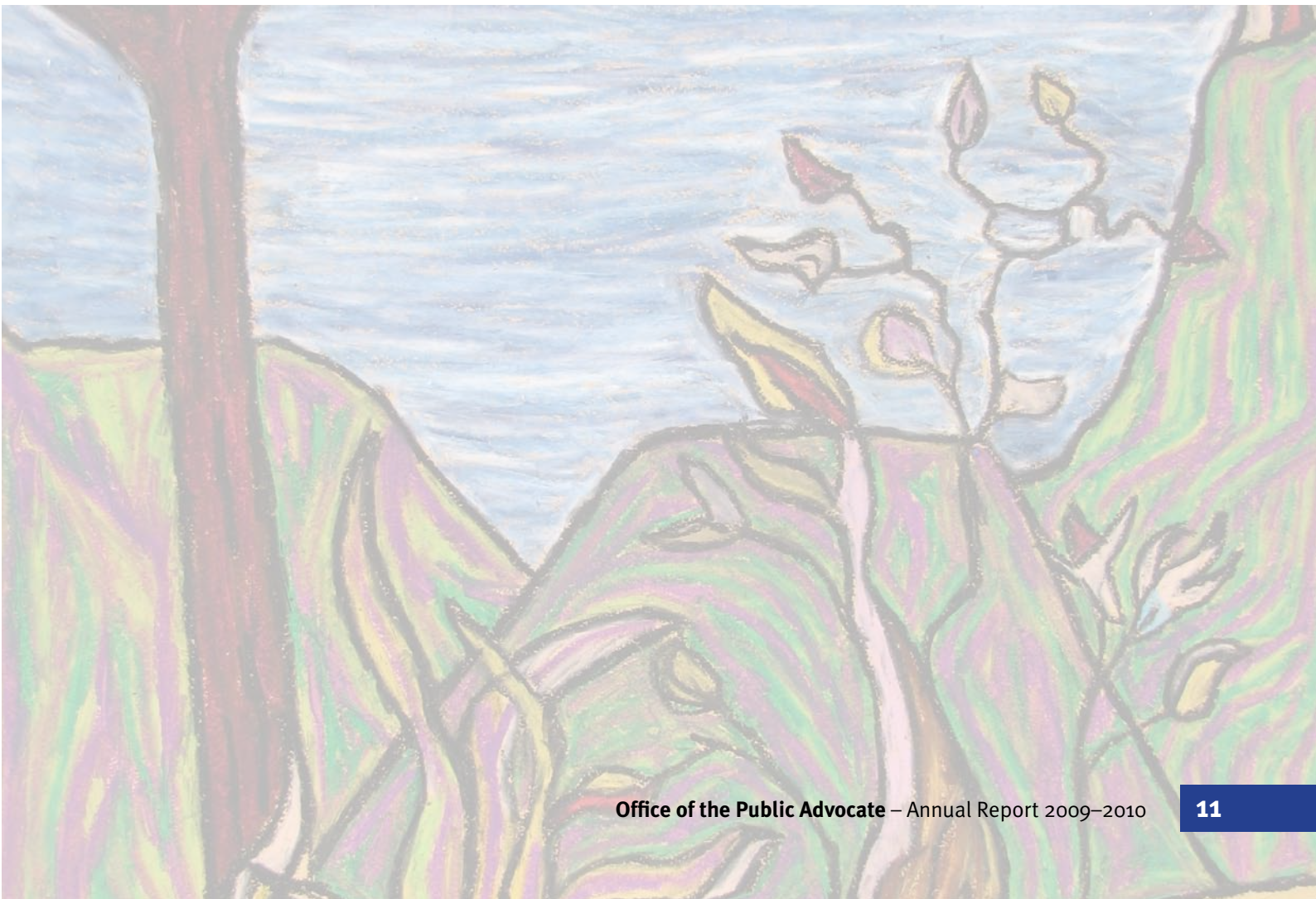


Systems Advocacy Framework 2010–2012

'The Misty Moon At Night' Dion Halse

A new direction for the future

In 2009–10 a strategic approach to statutory systems advocacy was developed to strengthen the reach of systems influence and position systems advocacy for the future.



Foundational assumptions

The work we undertook to develop a new framework for statutory systems advocacy had, as its starting point, the following assumptions.

A legislative mandate	Independent systems advocacy conducted within the government's social policy and governance structures
Fair	Values of integrity and accountability underpin our work
Contemporary	A commitment to good will and ideas to improve outcomes and opportunities
Informed	Solution-focused, based on knowledge and evidence
Strategic	A strategic understanding of the structural barriers to inclusion
Targeted	Outcomes achieved through the delivery of planned priority projects
Responsible	Outcome measures and business processes that are best practice
Positioned for influence	Aligned with the strategic priorities of government

Our values

In surveying the practice of systems advocacy in other Australian and international jurisdictions, we reached the conclusion that a strong values base must underpin our work.

Creative influence

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

Knowledge leadership

We are committed to research and analysis that informs social policy debate, to progress inclusive and sustainable responses for people with impaired decision-making capacity.

Professionalism and integrity

We work with clear purpose and commitment to systems advocacy, within a culture where accountability and respect is paramount.

The link with experience, evidence and knowledge

A series of workshops were conducted with both Adult Guardian staff and community visitors. Consistent themes emerged from these workshops in relation to the systemic issues impacting on the rights protection of people with impaired decision-making capacity and their participation in the life of the community. These themes were used to inform the development of the framework. Below is a summary of the major themes which emerged from these consultations.

“What is happening now” – the barriers faced by people with impaired decision-making capacity

Labelling

Lack of opportunities

Violation of rights

Risk aversion by services

Desensitised services

Revolving crisis situations

“What we want for the future” – a new service system

Access to a broad range of services

Sustainable service systems

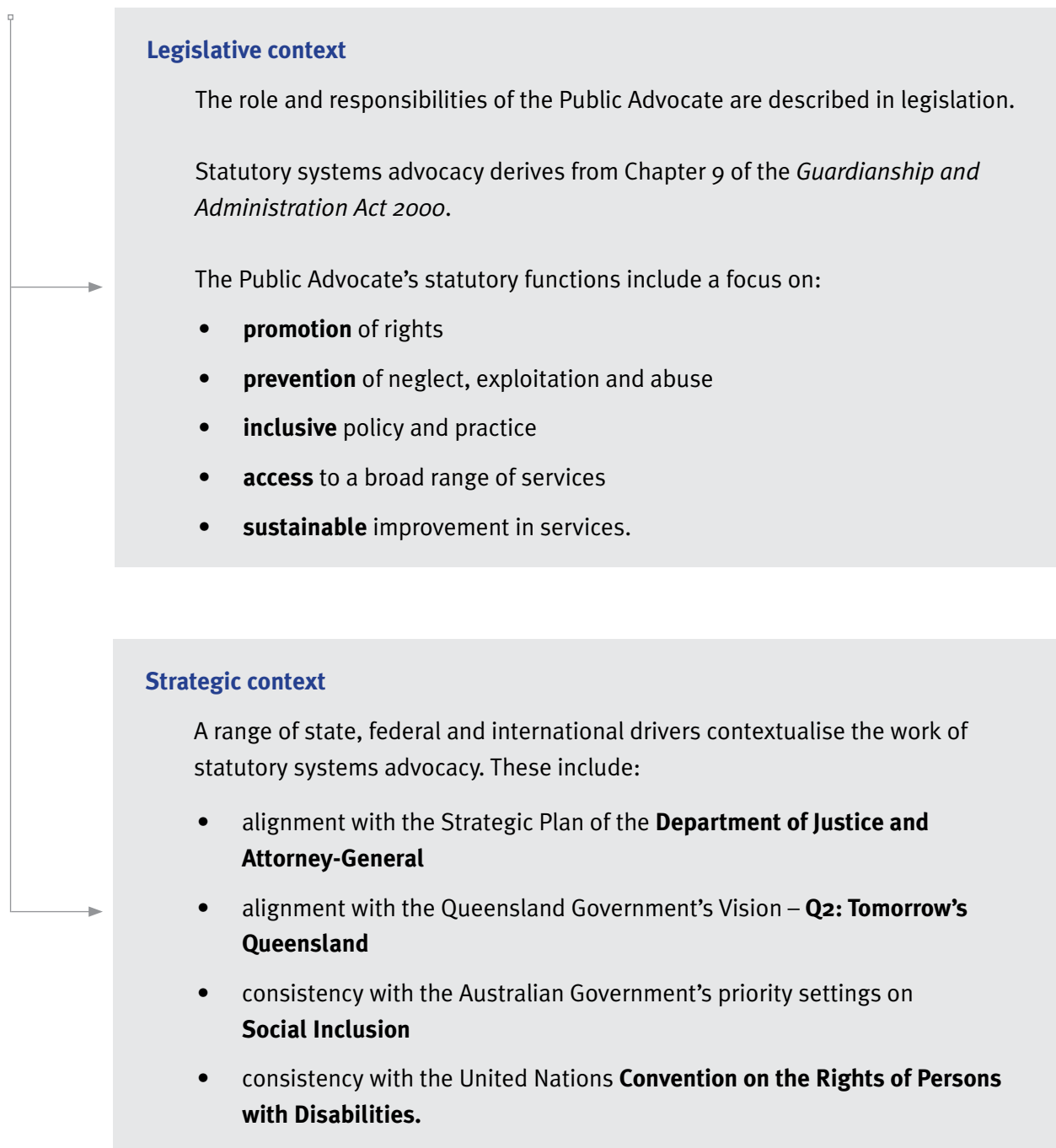
Accessible information

Early intervention and a focus on prevention

Proactive, not reactive

What drives our work?

In developing the framework, it was important for us to first understand the contemporary legislative and social policy contexts.



The diagram opposite illustrates the key drivers which underpin the work of statutory systems advocacy for people with impaired decision-making capacity and the links between our legislative and strategic contexts. It highlights the important guidance that can be provided by the national focus on social inclusion, our international commitment to the rights of persons with disabilities, and the legislative basis for statutory systems advocacy.

Office of the Public Advocate

Systems Advocacy Context

The focus of the Office of the Public Advocate is on providing systems advocacy for adults with impaired decision-making capacity (Section 209 *Guardianship and Administration Act 2000*).

Promoting and protecting the rights of adults with impaired capacity

Promoting the protection of the adults from neglect, exploitation or abuse

Encouraging the development of programs that promote the greatest practicable degree of autonomy

Promoting the provision of services and facilities

Monitoring and reviewing the delivery of services and facilities

Legislative drivers

Systems advocacy focus

Rights promotion

Minimise neglect, exploitation and abuse

Promote inclusive policy and practice

Promote access to a broad range of services

Promote continuous improvement of services

Promotion

Prevention

Inclusion

Access

Sustainable

Agency drivers

Our vision is to realise a just and inclusive society for all citizens.

Strategic drivers

Department of Justice and Attorney-General

Vision: A fair, safe and just Queensland.

Department of Justice and Attorney-General

Mission:

To contribute to a fair and just society and safe, healthy, productive workplaces and communities.

Departmental drivers

Toward Q2: Tomorrow's Queensland

Vision:

A fair Queensland.

Toward Q2: Tomorrow's Queensland

Mission:

Supporting safe and caring communities through services that deliver justice, protect vulnerable people, increase community and workplace safety and uphold rights.

State drivers

Social Inclusion

The Australian Government's vision of a socially inclusive society is one in which all Australians feel valued and have the opportunity to participate fully in the life of our society. All States and Territories have 'signed-up' to advancing the principles of social inclusion.

National drivers

United Nations Convention

The Australian Government is a signatory to the *United Nations Convention on the Rights of Persons with Disabilities* sometimes referred to as the United Nations Disability Inclusion Convention.

The Convention expresses existing rights in a manner that addresses the needs and situation of people with disability. Signatory States are obligated to introduce measures that promote the human rights of people with disability without discrimination.

International drivers

The Systems Advocacy Framework for 2010–2012

The framework is a key strategic document setting the direction for the Office of the Public Advocate. With it we make a public commitment to improving life opportunities for people with impaired decision-making capacity. The framework articulates our vision for the future, how we will approach our systems advocacy and where we will invest our resources over the next few years.

Our vision

Our vision is to realise a just and inclusive society for all citizens

All of us aspire to live in a society which is characterised by fairness and justice, one in which we can access those goods and services necessary to sustain and enrich our lives.

Our approach

We are committed to evidence-based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes for people with impaired decision-making capacity.

People with impaired decision-making capacity have fewer opportunities to realise the vision of a just and inclusive life. Policy and programs are needed which expand opportunities for social and economic participation, to improve quality of life.

System advocacy actions

- Create and use knowledge acquired through research and consultation.
- Contribute to and advocate for policy and service environments that foster rights promotion in a sustainable and transparent way.
- Encourage the development of systems that are inclusive, accessible and equitable.
- Communicate about priority systems barriers.

Statutory systems advocacy can contribute to the creation of a more inclusive life for people by working to inform, encourage, communicate and influence inclusive policy and legislative reform to reduce and prevent abuse, neglect and exploitation.

The diagram opposite is a culmination of our work in developing the new framework for statutory systems advocacy. It provides an overview of the key elements of our Systems Advocacy Framework 2010-2012. It highlights in simple terms what we do, who we do it for and how we get there.

Systems Advocacy Framework 2010-2012

Vision

Our vision is to realise a just and inclusive society for all citizens

Our Role

We will promote and protect the rights, autonomy and participation of people with impaired decision making capacity in our community

Our Approach

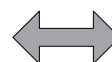
We are committed to evidence-based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes for people with impaired decision making capacity

Priorities for focus

Promotion and protection of rights and interests



Inclusion and access to the goods and services available to all citizens



Sustainable service systems that improve outcomes

Key Result Areas (KRA)

KRA 1 – Knowledge and Evidence

- Use an evidence based approach to all research and information gathering activity
- Produce, integrate and translate knowledge for key audiences /stakeholders

KRA 2 – Communication and Influence

- Provide accurate, reliable and timely information to stakeholders on priority systems advocacy matters
- Develop effective communication strategies to promote and protect rights and interests

KRA 3 – Advocacy and Inclusion

- Promote and protect rights, interests and wellbeing
- Promote inclusive policy, programs and practice to improve social and economic participation
- Ensure government reform, policy and legislation considers and addresses rights and interests

KRA 4 – Business Processes

- Operate transparently and with accountability
- Ensure effective business and risk processes

Systems Advocacy Actions

- **Create and use knowledge** acquired through research and consultation
- Contribute to and advocate for policy and service environments that foster **rights promotion** in a sustainable and transparent way
- Encourage the **development of systems** that are inclusive, accessible and equitable
- **Communicate** about priority systems barriers

Priority Population

We will focus our efforts on people with impaired decision making capacity who experience the greatest exclusion and disadvantage.

Priority Setting for Action

We are committed to engaging with government to advance inclusive policy and legislative reform.



'Evolution' Louis Leigh-Lucas

Assessing our performance

In developing our framework, it became clear that we must articulate the principles of sound governance to enhance transparency. These require the Office of the Public Advocate to be accountable for its actions and to deliver against our identified priorities.

The delivery of priority projects will be assessed against the four key result areas outlined below.

Key Result Area 1

Knowledge and evidence

- Is our advocacy based on research and evidence?
- Have we used this knowledge to generate innovative ideas?
- Has this knowledge been translated for different audiences?

Key Result Area 2

Communication and influence

- Have we provided reliable and meaningful information to key audiences?
- Have we used a variety of communication methods?
- Is the knowledge communicated for maximum influence?

Key Result Area 3

Advocacy and inclusion

- How have we promoted inclusive policy and practice?
- How have we worked to ensure that policy reform promotes the rights and interests of people with impaired decision-making capacity?
- Have we effectively advanced systems responses that protect people from abuse, neglect and exploitation?

Key Result Area 4

Business processes

- Are effective policies and processes in place to support our work?
- Can we demonstrate accountability and transparency?
- Have we used a contemporary business planning approach?

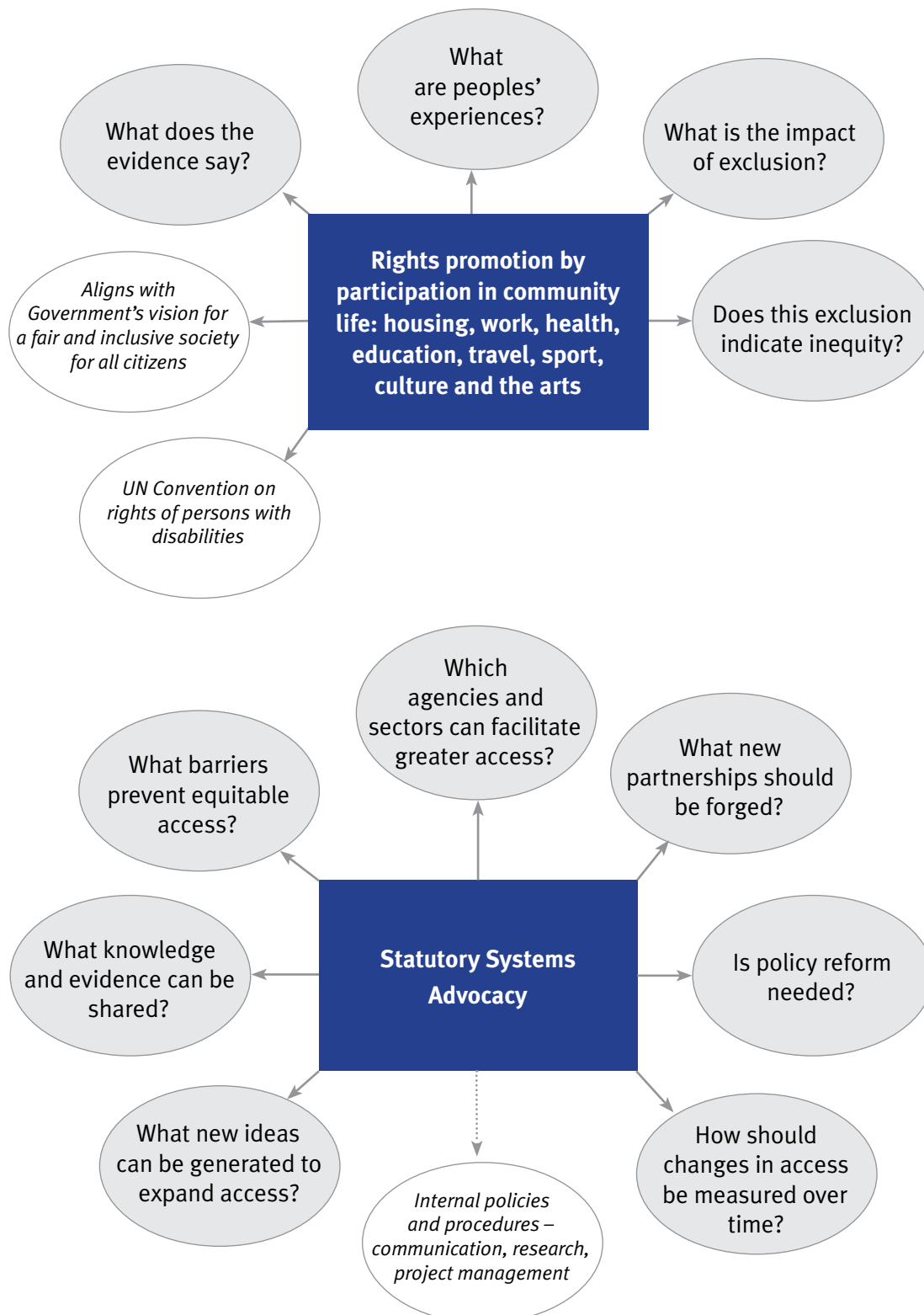
What does this mean for our systems advocacy?

Our work in developing the framework signifies a shift in how we conduct our practice.

Structural	A systems focus is key – the reform of <i>strategic</i> policies is in scope.
We have a broader focus than specialist disability services – quality of life is enhanced through access to mainstream goods and services.	Mainstream
Statutory	We operate within government from a legislative base and we are accountable to parliament.
Our systems advocacy is collaborative. It is conducted in an environment of goodwill, mutual respect and the realisation of shared interests.	Solution-focussed
Proactive	We intervene early in the policy process, prior to the development of new legislative and policy options.
We engage with new voices and perspectives to broaden the influence base for sustainable systems change.	New voices
Planned	We identify priority projects and focus on achieving progress in these areas.
Our practice is consistent with those of other government agencies – underpinned by a suite of business policies and processes.	Good governance
Forward-looking	Our systems advocacy approach is contemporary and innovative, focussed on the generation of new ideas and influence.

Applying the framework – an example

The following diagram shows how the Systems Advocacy Framework 2010-2012 might be applied to rights promotion for people with impaired decision-making capacity through improving access and expanding opportunities to participate in all aspects of community life.



Social inclusion for people with a disability



'Black' Karla Duvey

Rights promotion through mainstream access

In 2009–10 research was conducted on the social inclusion of people with a disability. Evidence and ideas papers from this research will be available in 2010–11.



Key research questions

- To what extent do people with a disability enjoy full social and economic participation in society?
- What are the key indicators of genuine social inclusion for this group of vulnerable people?
- Has the sizeable investment in specialist disability services over recent years resulted in real gains in the social and economic advancement of people with a disability?

This project links to:

Four of our agency drivers for systems advocacy:

- rights promotion
- promotion of inclusive policy and practice
- promoting access to a broad range of services
- promoting the continuous improvement of services.

Refer to diagram on page 17.

- The vision for the Department of Justice and Attorney-General: *A fair, safe and just Queensland*
- *Towards Q2: Tomorrow's Queensland* ambitions of a Fair Queensland
- The Australian Government's Social Inclusion reforms
- United Nations Convention on the Rights of Persons with Disabilities

Social inclusion

2009–10

Research was conducted into social inclusion

2010–11

Evidence and ideas papers will be published

This project delivers against the Systems Advocacy Framework 2010–2012:

Key Result Area 1

Knowledge and evidence

Key Result Area 2

Communication and influence

Key Result Area 3

Advocacy and inclusion

Refer to diagram on page 17.

What we did

The project analysed the available research and literature from state, national and international arenas. The research focussed on the extent to which people with a disability enjoy equitable participation in mainstream goods and services, and whether specialist service systems have delivered genuine social inclusion for this group of vulnerable and marginalised people.

Specialist services will continue to play a very important role in the lives of some people with a disability, but these services alone cannot deliver improved inclusion and participation rates

Our core focus – specialist services or social inclusion?

This work posed serious questions for our future systems advocacy. How much of our future advocacy resources should we direct to the reform of the specialist disability service system? How much should we apply to the understanding and removal of those structural barriers which prevent people with impaired decision-making capacity from accessing the goods and services enjoyed by the wider community?

- The evidence suggests that the significant injection of funds into specialist disability services over the past decade has not as yet delivered the expected improvement in life outcomes and opportunities wanted by people with a disability and their families.
- Australians with disability have significantly worse life outcomes when compared to other Australians, or to people with disability in similar countries.⁶

- The evidence suggests that the artificial separation between ‘specialist’ and ‘mainstream’ services for marginalised people, instead of removing barriers to social inclusion, may have actually contributed to the development of stereotypical responses rather than personalised responses.
- The specialist disability system alone cannot remove barriers to employment and training, cultural and recreational participation, physical health and well-being, meaningful community participation, or equitable access to justice.
- Only a small proportion of all Queenslanders with significant disabilities receive a specialist disability service.
- Specialist services will continue to play a very important role in the lives of some people with a disability, but these services alone cannot deliver improved inclusion and participation rates.

We concluded that the specialist disability service system will continue to be a focus for our work, situated within our broader vision of genuine social and economic participation in the mainstream, and the reduction and prevention of abuse, neglect and exploitation.

⁶ Council of Australian Governments (2010) *2010–2020 National Disability Strategy*, p. 12

Evidence and research

Social inclusion should be a target, and embedded as a measurable and explicit outcome in policy, program and practice

Who

This research is aimed at people with a social policy interest, or those who develop or influence the development of government social policy and programs.

Traditional approach

Issues-based advocacy has led to policy fragmentation and poor levels of integrated service delivery.

Population-group advocacy has led to diverse interests competing for the same pool of scarce resources.

Inclusion approach

To identify and address entrenched disadvantage and the fundamental structural problems which prevent access to mainstream goods and services for people with a disability and their families.

Findings

There has been a significant increase in government spending on specialist disability services over the past decade or so.

However the life outcomes for people with a disability and their families have not greatly improved and, on some measures, have declined.

What is social exclusion?

A lack of or denial of access to resources, goods and services.

Barriers to fair participation in the relationships and activities available to most people in society.

Discrimination in economic, social, cultural and political participation.

Affecting both citizens' quality of life and the cohesion of society as a whole.⁷

Findings

People with a disability are excluded from:⁸

- civil society (e.g. through legal sanctions)
- social goods (e.g. unmet needs)
- social production (few opportunities to contribute)
- economic main-stream (unequal access to normal forms of livelihood).

What this means

Many of the structural barriers impacting on the social inclusion of people with a disability lie outside the specialist disability sector.

Social inclusion should be a target, and embedded as a measurable and explicit outcome in policy, program and practice across all agencies.

Systems advocacy is well positioned to contribute to strong social policy that will improve the social, civil and economic participation rates.

⁷ adapted from Levitas, R. et al (2007). *The multi-dimensional analysis of social exclusion*. Bristol: Department of Sociology and School of Social Policy, University of Bristol.

⁸ adapted from Vinson, T. et al (2009). *A compendium of social inclusion indicators How's Australia faring?* Prepared for the Social Inclusion Unit, Department of Prime Minister and Cabinet. Commonwealth of Australia: Canberra.

Promoting a social inclusion approach

For statutory systems advocacy

1. What mainstream goods and services are fundamental for sustaining and enriching citizen's lives? (e.g. participation in cultural and recreational pursuits, primary healthcare, learning opportunities or employment opportunities.)
2. Do people with impaired capacity and their families have equitable access to these goods and services?
3. What structural barriers are preventing greater access?
4. What key measures would indicate improved equity of access?
5. What knowledge and evidence could be shared to promote greater access?
6. What are some creative ideas for facilitating greater access?
7. What new partnerships could be forged to facilitate structural change?

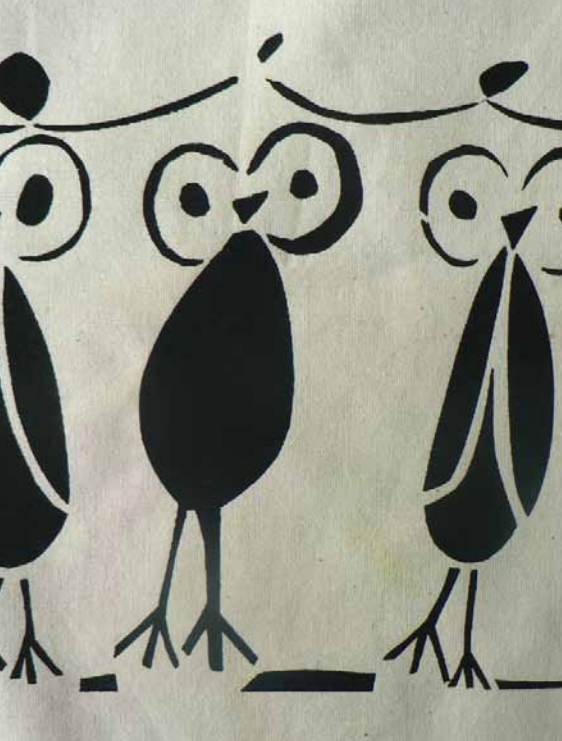
For policy makers

1. What policy shifts will promote more equitable access to mainstream goods and services for people with impaired capacity and their families?
2. What current policy and program barriers should be removed to ensure greater access?
3. What key indicators would signal an improvement in social inclusion?
4. What measureable targets should be built into the development of new policy and programs?
5. What links need to be made with other policy and service systems to ensure a more inclusive approach across government?

What measureable targets should be built into the development of new policy and programs?



Sam Leahy (Administration Officer) and Marcus Richards (Principal Research Officer)

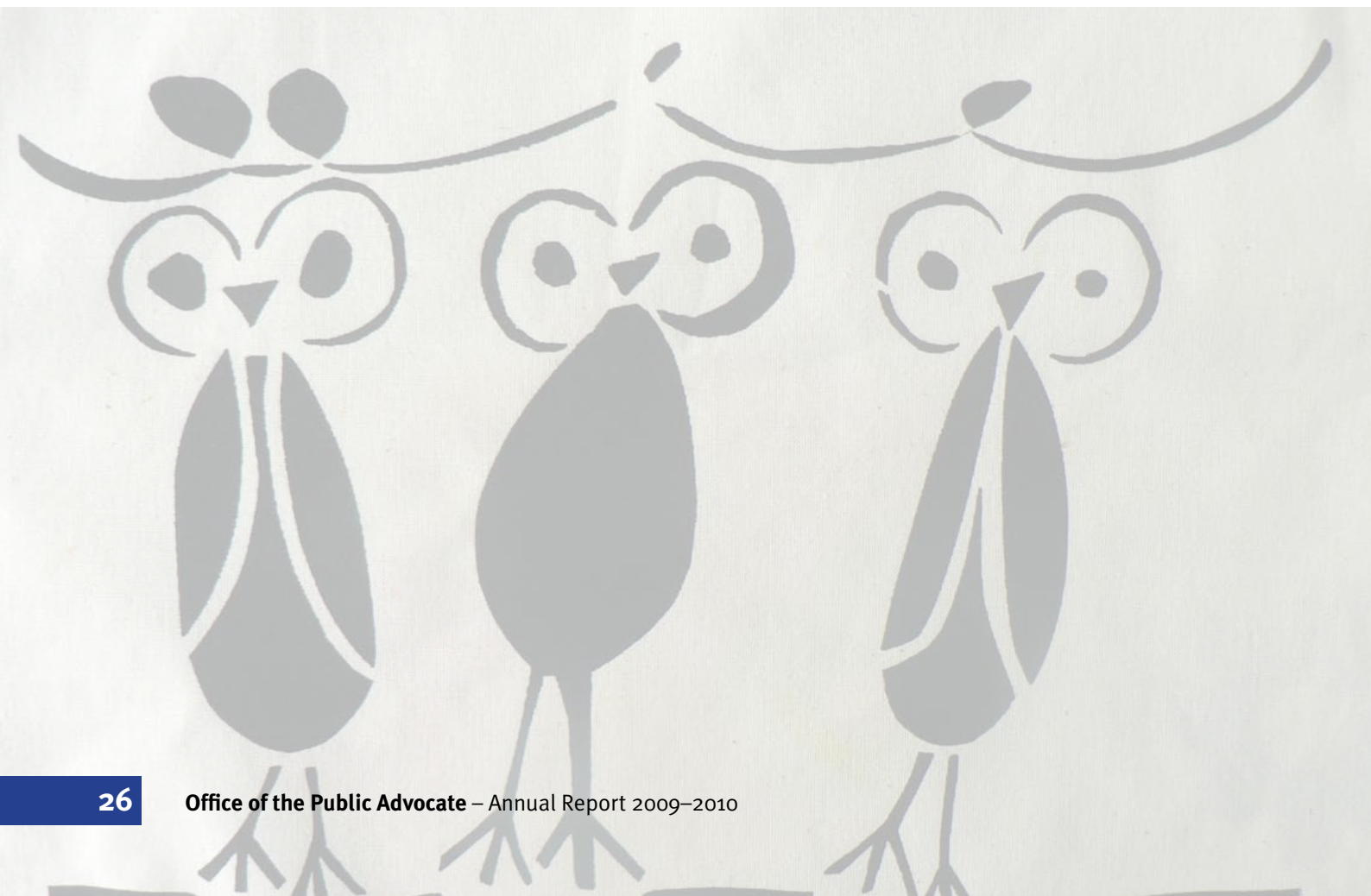


Listening to the silent voices – Community Visitor Program

'Owl Screenprint' Mandy Johnstone

Strengthening systems influence

In 2009–10 a project on the Community Visitor Program was undertaken in collaboration with the Adult Guardian with a view to strengthening its systemic influence.



Key research questions

- How can the Community Visitor Program be strengthened to enhance the life outcomes and inclusion of people with impaired decision-making capacity?
- How can the knowledge base of the Community Visitor Program assist government and non-government service providers to improve choice, participation and autonomy?
- How can the knowledge base of the Community Visitor Program assist the identification of future systems advocacy priorities?

This project links to:

Three of our agency drivers for systems advocacy:

- rights promotion
- minimising neglect, exploitation and abuse
- promoting the continuous improvement of services.

Refer to diagram on page 17.

The vision for the Department of Justice and Attorney-General: *A fair, safe and just Queensland*).

Towards Q2: Tomorrow's Queensland ambitions of a Fair Queensland.

Community Visitor Program project

2009–10

A project on the Community Visitor Program was undertaken

2010–11

We will strengthen our understanding of people living in residential services and hostels using a client profile approach

This project delivers against the Systems Advocacy Framework:

Key Result Area 1

Knowledge and evidence

Key Result Area 2

Communication and influence

Key Result Area 3

Advocacy and inclusion

Refer to diagram on page 17.

The silent voices

Many people with impaired decision-making capacity are highly isolated and have little real participation in mainstream community life. Some have few meaningful engagement opportunities with their family; some are unable to access basic goods and services (such as primary healthcare or cultural events); some are without friends, advocates, and without a voice.

Some people with impaired capacity live in residential disability services, private hostels or inpatient mental health facilities.

Community visitors help to safeguard the interests of people who live in these facilities by providing a level of independent scrutiny into the provision of services, the restriction of rights, and the management of complaints. As one of the five programs of the guardianship system, the Community Visitor Program provides added value to the existing protective system for vulnerable people with disabilities.⁹ This is highlighted by its notable out-reach capacity and coverage. In its 2009–10 Annual Report the Department of Justice and Attorney-General noted that community visitors:

- visited 920 sites throughout Queensland which supported 7,101 people
- undertook 6,196 separate visits.

The Community Visitor Program is well positioned to assist services to enhance choices, autonomy and participation for people with impaired decision-making capacity

As well as helping to protect the rights of individuals, the Community Visitor Program is well positioned to inform future system advocacy priorities and to assist government and non-government services to enhance choices, autonomy and participation for people with impaired decision-making capacity.

The project

The project was commissioned by the Public Advocate, and conducted in collaboration with the Adult Guardian. The purpose of the project was to explore:

- how the Community Visitor Program can be strengthened to improve outcomes for people with impaired decision-making capacity
- how the knowledge base of the Community Visitor Program can be used to assist government and non-government services to improve the quality of service responses, the promotion of rights and rates of social and economic participation
- how the evidence base of the Community Visitor Program can be used to better inform future systems advocacy priorities.

In conducting this project, consultation was undertaken with:

- community visitors
- staff of the Office of the Adult Guardian
- seven Queensland Government agencies
- four non-government service providers
- three peak sector bodies
- the Queensland Civil and Administrative Tribunal
- two interstate jurisdictions which operate community visitor programs.

⁹ The other areas in the guardianship system are Queensland Civil and Administrative Tribunal, the Public Trustee of Queensland, the Adult Guardian and the Public Advocate.

The
silent
voices

Inform
advocacy
priorities

Advance
inclusive
responses



‘Sunflowers’ Mandy Johnstone

Some systems findings

The Community Visitor Program is valued among key stakeholders.

There is support across the stakeholders for strengthening the Community Visitor Program.

The Community Visitor Program is regarded as one of the proactive elements of the protective system – the system’s “...ears and eyes”.

It was observed that the Community Visitor Program visits people who are highly isolated, who have no family, friends or guardians in their lives and who have little or no access to services.

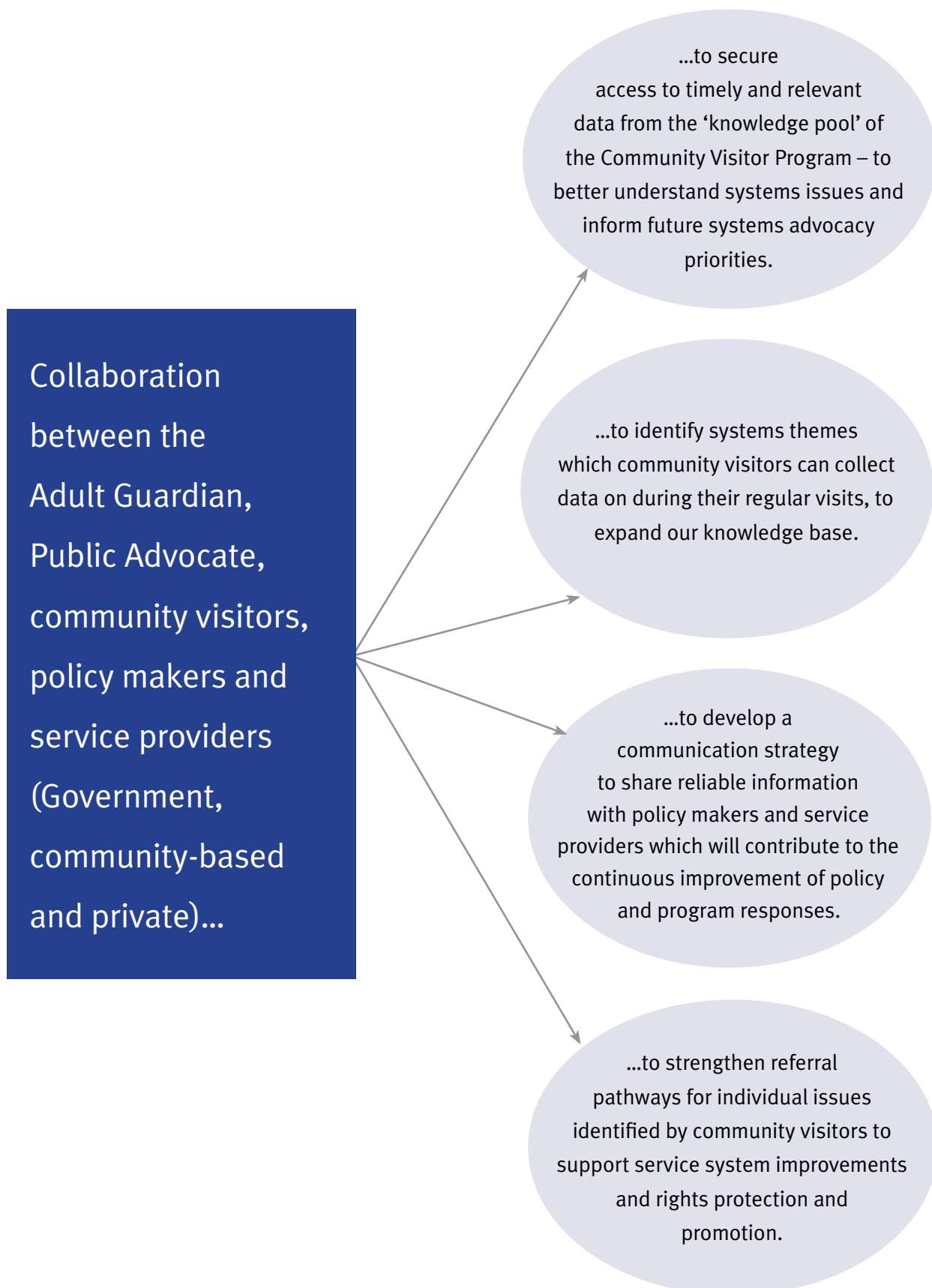
There was interest in obtaining regular, robust data from the Community Visitor Program to assist service providers to plan for and deliver improvements in service responses.

There was support for strengthening the complaints referral system to enhance its capacity to resolve complaints and contribute to sustainable outcomes for people with impaired decision-making capacity.

This project also explored some operational aspects of the Community Visitor Program, at the Adult Guardian’s invitation. The findings have been provided to the Adult Guardian for her consideration.

Future long-term opportunities

The project identified a number of opportunities for long-term collaboration, with a view to enhancing the contribution of the 'silent voices'.



Legal advocacy on elder abuse

'Somewhere Peaceful' Lisa Blake

A joint issues paper

In 2009–10 a joint issues paper on Elder Abuse and the Law was published, to promote discussion about how the law can better protect older Queenslanders from abuse.

Key questions

- What protections currently exist under Queensland law for the protection of older people from abuse or exploitation?
- How could the law be strengthened to better protect older people?
- Are there learnings from other jurisdictions we should consider?

This project links to:

Three of our agency drivers for systems advocacy:

- rights promotion
- minimising neglect, exploitation and abuse
- promoting the continuous improvement of services.

Refer to diagram on page 17.

The vision for the Department of Justice and Attorney-General: *A fair, safe and just Queensland.*

Towards Q2: Tomorrow's Queensland ambitions of a Fair Queensland.

Elder abuse

2009–10

A joint issues paper with the Queensland Law Society was released in June 2010

2010–11

We will develop preliminary research on the social perspectives of elder abuse

This project delivers against the Systems Advocacy Framework:

Key Result Area 1

Knowledge and evidence

Key Result Area 2

Communication and influence

Key Result Area 3

Advocacy and inclusion

Refer to diagram on p17.

Background

There is a growing recognition, both in Australia and internationally, that the abuse of older people – whether physical, sexual, financial, psychological, or through neglect – is a fundamental human rights concern. It has serious personal, economic and social ramifications for individuals and the community. Older persons whose decision-making is impaired are particularly vulnerable to abuse, sometimes with devastating consequences.

Purpose

This paper delivered by the Public Advocate and the Queensland Law Society, represents the culmination of work initiated by the previous Public Advocate. The paper was launched in June 2010.

Its purpose is to examine the legal protections which currently exist in Queensland for the prevention of elder abuse and the capacity of the law to respond when abuse occurs.

Both legal and social responses have a role to play in preventing elder abuse and facilitating access to justice for older persons. Our community needs strong legislative safeguards, robust policy frameworks, well-resourced programs and services and public awareness initiatives.

The aim of this paper is to stimulate discussion on legal protections and to advance options for reform. It provides a basis to explore and develop the law for the benefit of vulnerable older people.

Elder abuse is...any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse can be physical, sexual, financial, psychological, social and/or neglect.

The issues paper is available from the Office of the Public Advocate's website
www.publicadvocate.qld.gov.au

Legal questions for further exploration

Our work in examining legal responses to elder abuse raised a number of questions for future consideration by the government and the community.

1. Should 'old age' create a special legal status of vulnerability which attracts the special protection of the law (e.g. creation of a specific criminal offence for elder abuse)?

Or should the focus be on removing barriers which older people experience in accessing the legal protections available to all citizens, regardless of their age or capacity?

2. Should the penalty provisions of conventional criminal offences be amended to incorporate incapacity or old age as an aggravating feature?

Or should the focus be on removing factors which might prevent physical or sexual assaults against older people being successfully prosecuted?

3. What might encourage the early reporting of suspected abuse or exploitation?

For example, by the time an allegation of financial abuse is made to the Adult Guardian, a person's assets are in many cases already stripped.

Do we need a greater investment in communication strategies, to raise awareness in the community of the rights of older people?

4. How can access to legal assistance be improved for older people?

What are the major barriers to access – cost, lack of awareness, lack of support to access services?

What additional barriers do older people with impaired capacity face in achieving equal access to legal assistance (for example, an inability to provide legal instruction to a solicitor)? How can these barriers be removed?

5. Should there be registration and monitoring of attorneys who are appointed under enduring documents, to better protect people's rights?

What legislative or policy instrument would do this most effectively and efficiently, and would operate successfully across jurisdictions?

6. Do the provisions of the *Civil Liability Act 2003* disadvantage older people?

The Civil Liability Act 2003 abolished some types of damages in personal injuries claims. Some other heads of damage (such as past loss of income and future economic loss) are less applicable to many older people.

What legislative response would provide more equitable access for older people?

7. Does the legal notion of the 'presumption of advancement' disadvantage older people?

This is the presumption that a transfer of an asset from a parent to a child is a gift – unless the older person can demonstrate that no gift was intended (for example, by proving that undue influence occurred).

8. The formation of complex or ambiguous family financial relationships is now quite common. What impact does this have on the law's ability to protect older people from financial abuse?

9. Would some regulation of Family Agreements be advantageous?

Family Agreements involve an arrangement between an older person and another party (usually family members) for an older person to transfer a benefit or property to the other party, in exchange for a promise of continuing or lifelong care. Many Family Agreements are vague, informal and undocumented. This creates contention as to their terms and conditions, and problems in enforcing and recognising the agreements at law.

What responsibilities should lawyers have for developing Family Agreements?

Do we need a greater investment in communication strategies, to raise awareness in the community of the rights of older people?

Project priorities for 2010–11

The office has undertaken a number of business planning activities to identify next year's priority projects.

Flagship

Key group: young people with an intellectual disability or brain injury

Issue: access to opportunities for employment, education and training, and meaningful community participation



Who are the key players we need to engage in order to improve access?

What types of knowledge and evidence do we need to share in order to influence the development of inclusive policies, programs and practices?

Collaborative

Key group: people 65 years and older

Issue: vulnerability to exploitation or abuse (financial, physical, sexual, psychological, social or neglect)



How can existing protections be strengthened in a strategic way?

What other agencies are well positioned for us to partner with?

What data needs to be collected to further develop the knowledge base on elder abuse?

Exploratory

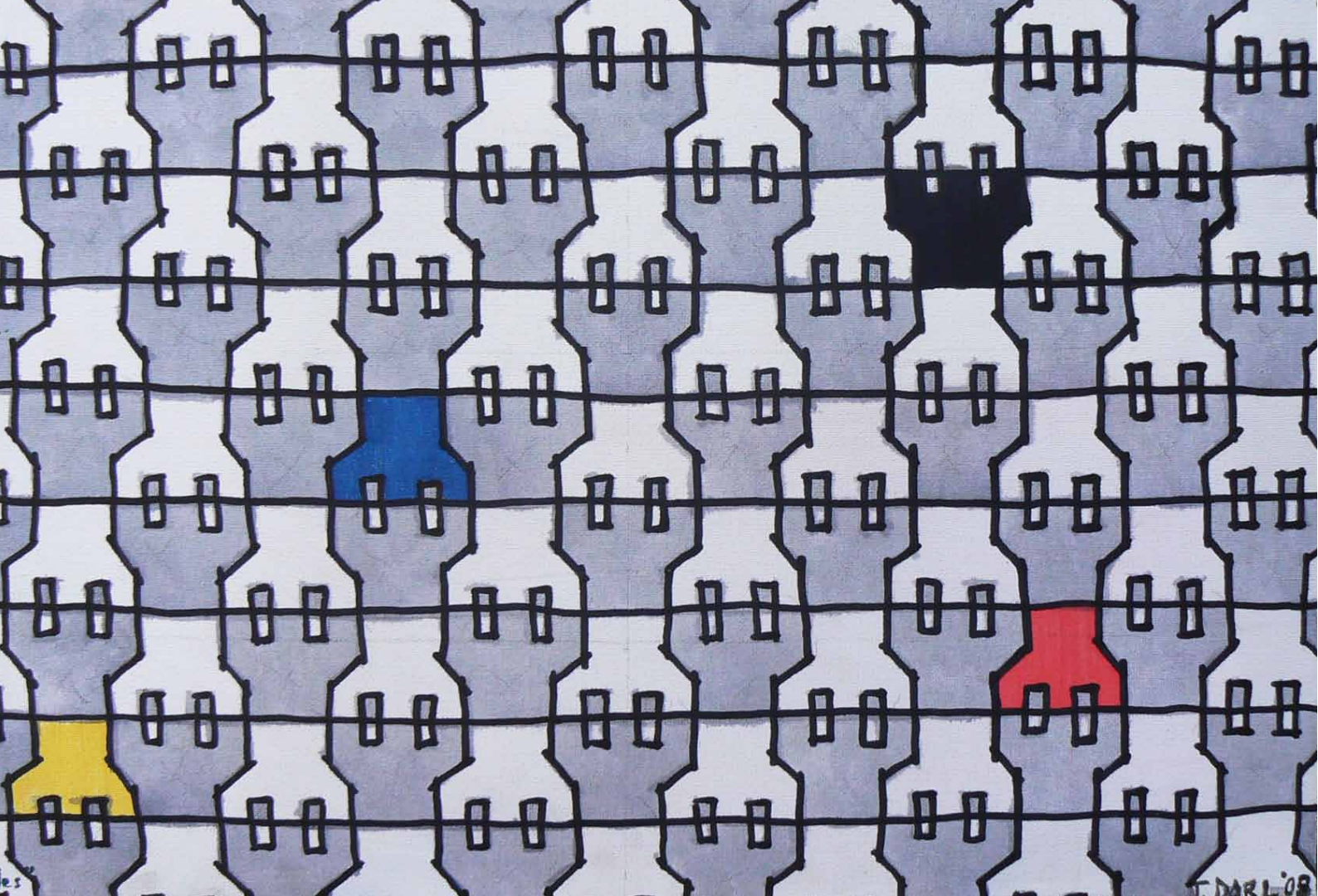
Key group: people who come into contact with the guardianship system

Issue: understanding needs, characteristics, strengths, service usage and trends.



What data and information needs to be collected to identify emerging systemic issues within the guardianship population?

How can this rich source of information be used to inform government and community about current and emerging needs of this group?



'Castles' Tanya Darl

Submissions and legal interventions

Submissions

The following submissions were made by the previous Public Advocate during 2009–10 and were reported in the previous annual report 2008–09.

- The Australian Health Workforce Ministerial Council's reforms for the registration and accreditation of health practitioners
- The Australian Mental Health Standing Committee's consultation on the draft standard for supporting recovery in mental health
- The Australian Health Ministers' Conference consultation on the implementation of healthcare identifiers

- The Australian's Government's review of the Aged Care Complaints Investigation Scheme
- The Australian Department of Treasury's draft legislation for the federal regulation of trustee company fees
- Queensland Law Reform Commission review of guardianship laws.

Legal Intervention

The previous Public Advocate was granted leave to intervene in a matter before the Guardianship and Administration Tribunal, in relation to the delegation of decision-making by an informal substitute decision-maker to a funded service provider. Advocacy was provided to the tribunal on possible systemic issues.

Research partnerships

As detailed in last year's annual report, the Public Advocate is a partner in a number of research endeavours. The reader is referred to the previous annual report 2008–09 for a more fulsome discussion of the projects.

Withholding and withdrawing life-sustaining treatment from adults lacking capacity: Enhancing medical decision-making through doctors' compliance with the law

Australian Research Council (ARC) Linkage Grant

Lead investigators:

Professor Lindy Willmott and Dr Ben White, Faculty of Law, Queensland University of Technology

The project is analysing the law regarding end-of-life decision-making in three Australian jurisdictions (including Queensland) to make recommendations for reform, establish the level of knowledge of medical professionals about the law, and identify strategies to assist medical professionals to improve their understanding of end-of-life decision-making. This three-year project is now in its second year.

Indigenous people and the guardianship system

Lead investigators:

Professor Jayne Clapton and Ms. Natalie Clements, School of Human Services and Social Work, Griffith University

Key partners:

Central Queensland University and James Cook University

The project, led by the Office of the Public Advocate, commenced in 2008–09. Its aim is to explore the notion of impaired capacity in relation to Indigenous people, and the interaction which Indigenous people and communities have with the guardianship system. In 2009–10, the research partners conducted a number of focus groups and interviews with key Indigenous stakeholders and human service agencies throughout Central and North Queensland. The research and analysis will be completed in 2010–11.

Feeling safe, acting safe: Self protection strategies of people with intellectual disability

Lead investigators:

Professor Lesley Chenoweth and Dr. Sally Robinson, School of Human Services and Social Work, Griffith University

Key partners:

Office of the Adult Guardian

Preliminary work was undertaken on this research project in 2009–10 in preparation for commencement in 2010–11. This study will explore the ways in which people with intellectual disability keep themselves safe in the places where they live, and the extent to which they are able to draw upon strategies to protect themselves from potential harm.



'Labyrinth' Lisa Blake

The Office of the Public Advocate

Organisational structure

During 2009–10, the Public Advocate was supported by a Principal Research Officer, a Senior Research Officer, a Senior Legal Officer and one full time Administration Officer. The office also employs one part-time Administration Officer.

The contributions of the following staff is acknowledged: Debbie Barber, Sam Leahy, Penny Neller, John O'Brien, Marcus Richards, Camille Smith-Watkins, and Allison Testa.

Michelle Howard concluded her tenure as Public Advocate in November 2009. Lindsay Irons acted as Public Advocate from January to June 2010.

Financial summary

Funding for the office is appropriated from the Queensland Government as part of the Department of Justice and Attorney-General's appropriation. The Director-General of the Department of Justice and Attorney-General is the Accountable Officer pursuant to the *Financial Administration and Audit Act 1977*.

The full financial details relating to the operations of the department are reported in the Annual Report of the Department of Justice and Attorney-General for 2009–2010.

A summary is provided below of expenditure for the 2009–2010 financial year.

Expenditure Items	
Employee Related Expenses	\$443,000
Supplies and Services	\$245,000
Grants	\$25,000
Depreciation, Amortisation & Deferred Maintenance	\$21,000
TOTAL	\$734,000

No overseas travel was undertaken during the year.

Grants were made in respect of three research projects:

- Withholding and withdrawing life-sustaining treatment from adults lacking capacity: Enhancing medical decision-making through doctors' compliance with the law
- Indigenous people and the guardianship system
- Feeling safe, acting safe: Self protection strategies of people with intellectual disability.



'Somewhere in Victoria' Andrew Pemberton

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Notes

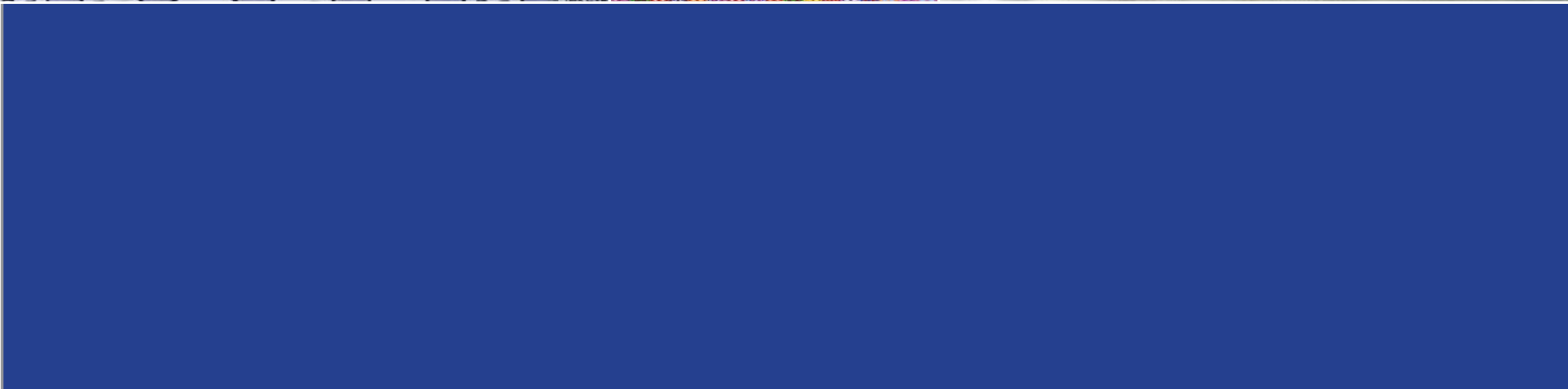
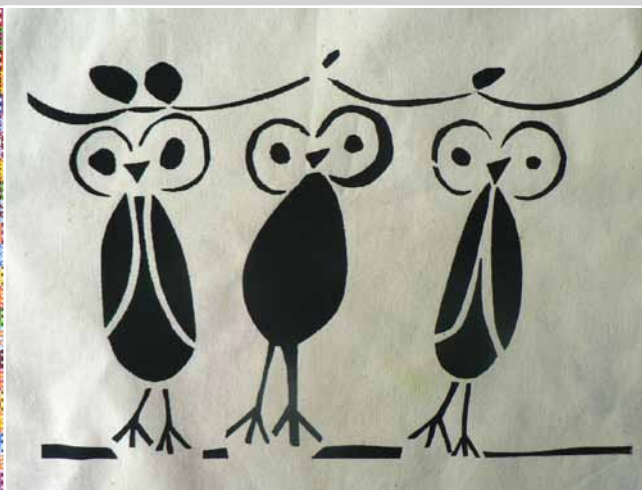
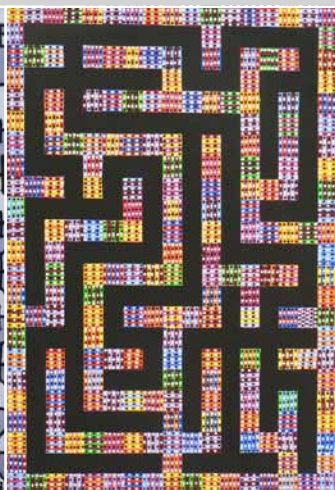
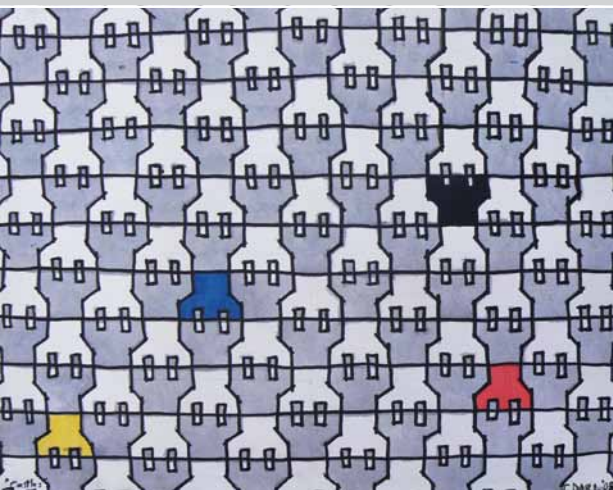
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