

Office of the Public Advocate

Systems Advocacy

Annual Report

2013–2014

The report is available online at:

www.publicadvocate.qld.gov.au or you may contact our Office for access to a hard copy. Full contact details are provided on the inside back cover.

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The Honourable Jarrod Bleijie MP

Attorney-General and Minister for Justice
State Law Building
50 Ann Street
BRISBANE QLD 4000

17 October 2014

Dear Attorney

I am pleased to present the Office of the Public Advocate's Annual Report for the financial year ended 30 June 2014.

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

The annual report provides information on the key activities of the Office of the Public Advocate for 2013-14 and a statement of our financial and operational functions for the year.

Under section 221 of the *Guardianship and Administration Act 2000*, the Office of the Public Advocate is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Yours sincerely

A handwritten signature in blue ink that reads 'Jodie Cook'.

Jodie Cook
Public Advocate Queensland

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The year in review

This past year, my second year as Public Advocate, has seen the Office progress a number of significant pieces of work in our efforts to effect change for Queenslanders with impaired decision-making capacity.

We have used this year to refine our research and advocacy agenda by defining priority focus areas and targeting the resources of the Office toward these priorities. This has enabled us to substantially enhance our evidence base in respect of key issues while remaining responsive to emerging concerns.

The work of the Office is currently being pursued within a dynamic environment of reform, particularly in the disability services and aged care sectors. In many ways these changes magnify the challenges that impact adults with impaired decision-making capacity even while they present opportunities for improved outcomes.

By concretely focusing the work of the Office, we have been able to more effectively address the matters that have been brought to our attention in respect of these reforms while also ensuring that our research and advocacy efforts are appropriately contextualised.

However, it is increasingly apparent that while the advent of the National Disability Insurance Scheme (NDIS) and My Aged Care (MyAC) continues to expand those areas of the landscape under national jurisdiction, the consequential impact on state systems is not limited to disability services and aged care.

The potential impact that these developing federal systems have on existing safeguarding mechanisms and the legislation that gives them effect is still being considered. Furthermore the design and development of 'replacement' safeguards within the evolving federal systems appears to still be in its infancy.

It is also apparent that increasing pressures are developing in complementary systems (for example guardianship) that will require further attention to ensure the sustainability of these systems is not unduly compromised.

In Queensland, this busy period of reform is not limited to the disability and aged care sectors. Nor is it limited to that which is being driven at a federal level.

In recent times, the Queensland government signalled its intention to reform the mental health sector by initiating a review of the *Mental Health Act 2000*. Supported by the work of the Queensland Mental Health Commission and the changes to health and hospital services in Queensland, the changing landscape lends itself to a culture shift that would offer significant benefit to adults with impaired capacity.

The current Government has also indicated a position in respect of the Queensland Law Reform Commission's review of guardianships laws in Queensland, and work is progressing to give effect to the first tranche of reform.

Both of these pieces of work herald significant change for Queenslanders with impaired decision-making capacity in coming years and the Office continues to engage with these activities to advocate for outcomes that appropriately protect and promote the rights and interests of those we serve to represent.

I am pleased to see the Office recognised as a key stakeholder in these transformational reforms. In particular, I appreciate having the opportunity to guide their development by being sought out to provide my views and position in respect of key areas of inquiry. While not always given effect in the course of policy development, I am pleased to see due consideration being given to the perspectives and recommendations that I have tabled.

The dynamic nature of reform enables a unique opportunity to influence the evolution of these systems and I will continue to advocate for the rights and interests of adults with impaired capacity to ensure that they are recognised and appropriately considered in systems design.

As always, I would like to acknowledge and commend my team for their commitment to the work of the Office and, more importantly, to adults with impaired decision-making capacity. Despite the team being small in number, these dedicated individuals produce a significant volume of work that is consistently of high quality and that gets to the heart of issues impacting the vulnerable Queenslanders whose rights and interests we seek to uphold.

The year ahead will, no doubt, be every bit as busy as the past year has been and will present an opportunity to continue building upon the priorities that the Office has established over the past two years.

I remain proud of all that we are achieving through the work of the Office and I look forward to continuing this work in the interests of promoting and pursuing effective and sustainable outcomes that improve the lives of Queenslanders with impaired decision-making capacity.



Jodie Cook
Public Advocate Queensland

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The Office of the Public Advocate

About the Office of the Public Advocate

Legislative Authority

The Office of the Public Advocate is given authority under chapter 9 of the *Guardianship and Administration Act 2000* to undertake systems advocacy on behalf of adults with impaired decision-making capacity.

Our primary role is to promote and protect the rights, autonomy and participation of Queenslanders with impaired decision-making capacity in all aspects of community life.

The core aim of our work is to advocate for systemic change that enables improvements in the lives of people with impaired decision-making capacity, and to create better outcomes, more opportunities and a just and inclusive community for all.

The Public Advocate is an independent statutory position appointed by Governor in Council in accordance with the requirements of the *Guardianship and Administration Act 2000*. Staff are appointed under the *Public Service Act 2008* to assist the Public Advocate to perform the functions under the *Guardianship and Administration Act 2000*.

Under section 209 of the *Guardianship and Administration Act 2000*, the functions of the Public Advocate are:

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

The Public Advocate may, utilising the powers provided under section 210 of the *Guardianship and Administration Act 2000*:

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

On 22 November 2012, the *Guardianship and Administration and Other Legislation Amendment Bill 2012* was assented to. Of particular note are the following additions to the powers of the Public Advocate:

- The right to access all information necessary to perform the Public Advocate's functions; and
- The ability to prepare a report to the Minister on systemic issues and have this tabled in Parliament.

The amendments also provide protection from liability for the giving of information to the Public Advocate.

These amendments represent an important step toward improving our evidence base, highlighting priority areas for systems advocacy work, and ensuring awareness of relevant issues by Government, service organisations and the community more broadly.

Strategic Approach

Our vision

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

Our role

We promote and protect the rights, autonomy and participation of Queenslanders 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 Queenslanders with impaired decision-making capacity.

Our influence

Creative influence: We engage collaboratively with our stakeholders by building goodwill, sharing knowledge 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 Queenslanders 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.

Our work

The way in which we approach systems advocacy centres on ensuring that our research and advocacy activities can be directly mapped to the functions of the Public Advocate role as per the *Guardianship and Administration Act 2000*.

The first part of this report presents a summary of contemporary issues relevant to people with impaired decision-making capacity in Queensland that are being addressed and/or monitored through the work of the Office.

This is followed by more specific information about the activities that we have undertaken in 2013-14. We have presented this information by mapping it against the key result areas around which we centre our business activity.

These key result areas are as follows:

- Key Result Area 1 – Knowledge and Evidence
- Key Result Area 2 – Communication and Influence
- Key Result Area 3 – Advocacy and Inclusion
- Key Result Area 4 – Business Processes

General principles and the health care principle

The *Guardianship and Administration Act 2000* provides that a person or other entity who performs a function or exercises a power under that Act for a matter in relation to an adult with impaired decision-making capacity must apply these principles¹.

These principles are firmly embedded in the approach that the Office of the Public Advocate takes to fulfilling its responsibilities.

Presumption of capacity

An adult is presumed to have capacity for a matter.

Same human rights

1. The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.
2. The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

Valued role as member of society

1. An adult's right to be a valued member of society must be recognised and taken into account.
2. Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

Maximum participation, minimal limitations and substituted judgment

1. An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.
2. Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.
3. So, for example—
 - the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
 - to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and
 - a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.
4. Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.
5. However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.
6. Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

¹ *Guardianship and Administration Act 2000* (Qld) s11(1); principles located in schedule 1.

Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

Maintenance of environment and values

1. The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.
2. For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom), must be taken into account.

Notes—

1 *Aboriginal tradition has the meaning given by the Acts Interpretation Act 1954, section 36.*

2 *Island custom has the meaning given by the Acts Interpretation Act 1954, section 36.*

Appropriate to circumstances

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.

Health care principle

1. The health care principle means power for a health matter, or special health matter, for an adult should be exercised by a guardian, the adult guardian, the tribunal, or for a matter relating to prescribed special health care, another entity—
 - in the way least restrictive of the adult's rights; and
 - only if the exercise of power—
 - is necessary and appropriate to maintain or promote the adult's health or wellbeing; or
 - is, in all the circumstances, in the adult's best interests.

Example of exercising power in the way least restrictive of the adult's rights—

If there is a choice between a more or less intrusive way of meeting an identified need, the less intrusive way should be adopted.

2. In deciding whether the exercise of a power is appropriate, the guardian, the adult guardian, tribunal or other entity must, to the greatest extent practicable—
 - seek the adult's views and wishes and take them into account; and
 - take the information given by the adult's health provider into account.

Note—

See section 76 (Health providers to give information).

3. The adult's views and wishes may be expressed—
 - orally; or
 - in writing, for example, in an advance health directive; or
 - in another way, including, for example, by conduct.
4. The health care principle does not affect any right an adult has to refuse health care.
5. In deciding whether to consent to special health care for an adult, the tribunal or other entity must, to the greatest extent practicable, seek the views of the following person and take them into account—
 - a guardian appointed by the tribunal for the adult;
 - if there is no guardian, an attorney for a health matter appointed by the adult;
 - if there is no guardian or attorney, the statutory health attorney for the adult.

Systems Advocacy in Queensland

Significant reforms have been, and are, occurring at both the national and state level across numerous sectors relevant to people with impaired decision-making capacity. This shifting service delivery landscape represents the beginning of a period of transformational change that provides a unique opportunity for systems advocacy.

The strategic direction for the Office of the Public Advocate is underpinned by priority focus areas that guide our work, and is operationalised within the context of local, national and international drivers.

Systems advocacy provides an opportunity to exert influence on the way that Government shapes its strategic agenda by promoting recognition for human rights and ensuring that this is translated into action.

At the international level, our work reflects Australia's commitment as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities* (the Convention). The purpose of the Convention being 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' (Article 1).

The Office is firmly committed to ensuring that Australia's responsibility under the Convention is upheld in Queensland. Furthermore, the Office actively promotes the Convention as being the foundation upon which all agencies both within and outside of Government should premise their legislative, strategic and operational frameworks.

Some of the particular focus areas for the Office are:

- Equality and non-discrimination (art 5);
- Awareness-raising (art 8);
- Equal recognition before the law (art 12);
- Freedom from exploitation, violence and abuse (art 16);
- Living independently and being included in the community (art 19);
- Freedom of expression and opinion and access to information (art 21);
- Respect for privacy (art 22);
- Respect for home and family (art 23);
- Education (art 24);

- Health (art 25);
- Habilitation and rehabilitation (art 26); and
- Work and employment (art 27).

Our work also seeks to support and influence federal priorities in an effort to increase the focus on human rights. There are a number of strategic directions at the national level that underpin our work, in particular:

- The Australian Government's *National Disability Strategy 2010-20*, which articulates the rights of people with disability. This is a 10-year national plan to improve the lives of people with disability, promote participation, and create a more inclusive society. It will guide public policy across governments and aims to bring about change in all mainstream services and programs as well as community infrastructure.
- The Council of Australian Governments' *Roadmap for National Mental Health Reform 2012-2022*, which outlines the reform directions that governments will take over the next 10 years and re-commits the Australian Government and states and territories to working together towards real improvements in the lives of people with mental illness, their families, carers and communities.
- The Australian Government's reform of the aged care sector, which began in 2012 and which involves a comprehensive 10-year plan to reshape aged care and build a better, fairer and more nationally consistent aged care system. Aged care reforms are being progressively implemented in three phases over 10 years, with the second tranche of major changes commencing on 1 July 2014.
- The *National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Services Sector*, which was endorsed by Commonwealth, State and Territory Ministers on 21 March 2014, focuses on achieving its goals by outlining key principles and key strategies to guide work in this area.

The work of the Office also contributes to the agenda of the Queensland Government as outlined in *Getting Queensland Back on Track* and supports the Strategic Plan of the Department of Justice and Attorney-General 2012-16 by playing an important role in the following departmental objectives over the past year:

- Protect adults with impaired decision-making capacity;
- Improve access to justice; and
- Protect the rights and interests of vulnerable Queenslanders.

Applying our statutory systems advocacy

Our commitment is toward building and drawing from an increasingly well-developed evidence-base by recognising and operationalising an approach to systems advocacy that is informed by robust data and information.

Last year (2012-13) we revisited the operations of the Office of the Public Advocate within the context of how best to achieve outcomes with due consideration for resourcing constraints, contemporary approaches and future directions. The progressive implementation of the project management approach that was adopted following this review has seen the work of the Office flourish.

To capitalise on this, in 2013-14 we further refined our strategic research and advocacy agenda by establishing primary focus areas against which our avenues of inquiry are prioritised.

The four focus areas for the Office are:

- Access to justice;
- Improved safeguards;
- Appropriate decision-making mechanisms; and
- Sustainable outcomes.

The functions for which the Office has responsibility can be directly mapped against these focus areas, which have been articulated in outcome-focussed language to symbolise that which we strive to achieve.

We continue to build upon and strengthen partnerships with other statutory bodies such as the Office of the Public Guardian (previously Adult Guardian), the Anti-Discrimination Commission of Queensland, and the Queensland Mental Health Commission through our research and advocacy work.

We have also continued our partnerships with tertiary institutions such as the Queensland University of Technology, Griffith University and the University of Queensland. Additionally, we are forging new partnerships in the research sector, such as those we have built with LaTrobe University and the University of New South Wales

Furthermore, we have engaged with numerous stakeholders within the sector and community in the course of pursuing our research and advocacy efforts. It has been pleasing to see the sector engage with many of the issues that we have highlighted through our research, and to further these through their own engagement with Government.

Our approach is both pro-active and responsive to the extent that we not only self-initiate research and advocacy projects but also seek to actively identify issues being raised by others and provide evidence in support of people with impaired decision-making capacity.

Potential population for statutory systems advocacy

In 2014, it is estimated that there are approximately 113,000 adults (1 in 42 people) with impaired decision-making capacity in Queensland. By 2024, the 'potential population' is estimated to increase to approximately 144,000 adults (1 in 40 people).

The 'potential population' concept utilises the latest data from the national Survey of Disability, Ageing and Carers conducted by the Australian Bureau of Statistics to identify and profile the potential population.

Notwithstanding the paradigm shift heralded by the Convention, we have defined the potential population as:

Adults living in either private households or cared accommodation (e.g. a group home, health establishment or institutional setting) who need support to make decisions or think through problems due to the impact of their disability.

The analysis of the potential population is reviewed annually, taking account of new data as it is available.

[The potential population for statutory systems advocacy includes all Queensland adults who have impaired decision-making capacity.](#)

[Our cohort is therefore broad and inclusive and is not restricted to people who access a government-funded or government-provided service, or people in the guardianship system.](#)

The primary factors that can impact decision-making capacity include intellectual disability, acquired brain injuries arising from catastrophic accidents, mental illness, ageing conditions such as dementia, and conditions associated with problematic alcohol and drug use.

It is important to note that not all people with these conditions will have impaired decision-making capacity, and that impaired decision-making capacity does not necessarily impact all areas of an adult's life, and may fluctuate in response to situational issues.

The Office of the Public Advocate is committed to increasing autonomy for adults with impaired capacity, noting that our work also contributes to improved outcomes for other vulnerable groups.

The shifting landscape for systems advocacy

In 2013-14, the Office reviewed its approach to operationalising the functions accorded to the Public Advocate by establishing primary focus areas against which our avenues of inquiry are prioritised.

This section presents a summary of key issues in relation to each focus area.

Access to Justice

People with impaired capacity are over-represented, as both victims and defendants, at all stages of the criminal justice system. They also experience heightened degrees of difficulty in navigating the system.

As part of our core business, the Office conducts research into issues impacting the extent to which Queenslanders with impaired capacity are able to access appropriate and equitable justice, and/or reasonable accommodation within justice systems, while also exploring good practice initiatives in other jurisdictions, both nationally and internationally.

The issues associated with enabling access to justice have been a focal point for inquiries at both state and national levels in recent years. Of note is the recent Parliamentary inquiry into *Strategies to Prevent and Reduce Criminal Activity in Queensland*, released in May 2014 and the Australian Human Rights Commission (AHRC) *Investigation into Access to Justice in the Criminal Justice System for People with Disability* undertaken across 2013-14. The latter inquiry is already yielding valuable insights into the barriers for people with disability in the criminal justice system.

In addition to the recommendations that may be generated by the aforementioned inquiry once it is completed in October 2014, one of the more significant pieces of work being undertaken at this time in relation to justice issues is the review of the *Mental Health Act 2000*.

Review of the *Mental Health Act 2000*

The Public Advocate was closely engaged with the review of the *Mental Health Act 2000* during 2013-14.

The Mental Health Act 2000 (Qld) is important legislation. Apart from the obvious fact that it affects the rights of people with mental illness, it also sets the tone and aspirations for the care and treatment of people with mental illness.

This was a point made by Dr Ian Freckleton QC in the public lecture he gave at the Queensland University of Technology (QUT) in May 2014.

The Public Advocate joined with the Australian Centre for Health Law Research and the Queensland Mental Health Commission to invite Dr Freckleton to give a public lecture on a human rights approach to mental health regulation.

Dr Freckleton was sought out to present the lecture due to his extensive qualifications, experience and knowledge base in relation to mental health law² and as part of a general strategy undertaken by the Public Advocate to become informed, and inform others to engage with the review of the *Mental Health Act 2000*.

In June 2014, the Public Advocate also hosted a Roundtable with legal professionals and relevant statutory officers who work with the current *Mental Health Act 2000* to consider the proposed changes in the Review of the *Mental Health Act 2000* Discussion Paper released by Queensland Health in May 2014.

The Public Advocate was interested to hear from those practitioners who have day-to-day practical experience of working with that Act to inform her submission. The Roundtable included representation from the Office of the then Adult Guardian; the Director of Mental Health; the Office of the Director Forensic Disability; the Office of the Director of Public Prosecutions; Legal Aid Queensland; Crown Law; the Anti-Discrimination Commission Queensland; the Department of Health; Queensland Advocacy Incorporated and Queensland Public Interest Law Clearing House Incorporated (QPILCH).

In addition to the Office's own research and experience, this engagement strategy informed the Public Advocate's response to the Discussion Paper, which proposed significant amendments to the *Mental Health Act 2000*.

Many significant reforms were proposed in the Discussion Paper. Overall, the Discussion Paper proposed many positive initiatives that the Public Advocate believed would potentially serve to clarify the current *Mental Health Act 2000*, make the legislation more workable and practicable for those who work within the system, and enhance safeguards for people with mental illness.

For example, giving the Mental Health Court the flexibility to make a number of different orders would assist in providing a more responsive forensic mental health system.

² Dr Ian Freckleton is a Queen's Counsel and member of both the Victorian and Tasmanian Bars. He is also a Professorial Fellow of Law and Psychiatry at the University of Melbourne, an Adjunct Professor of Law at Monash University and a member of both the Mental Health Review Board of Victoria and the Psychosurgery Review Board of Victoria. He is an elected Fellow of the Australian Academy of Law, the Australian Academy of Social Sciences and the Australasian College of Legal Medicine, the editor of the *Journal of Law and Medicine* and the Editor-in-Chief of *Psychiatry, Psychology and Law*.

Furthermore the proposal to provide the Magistrates Court with procedural provisions to deal with unsoundness of mind and unfitness for trial represents a long overdue response to the issue of people with mental illness or intellectual disability charged with simple offences and appearing in the lower courts.

There were, however, a number of areas where the Public Advocate had concerns.

First, the Public Advocate believes there is a need to provide a greater focus on a rights-based and recovery-oriented approach. This includes the need to review and amend the current purpose and principles of the *Mental Health Act 2000*.

Second, the Public Advocate believed that the proposed division between the Magistrates Court and the Mental Health Court, with (subject to some limited exceptions) only those matters that must be heard on indictment being able to be referred to the Mental Health Court, created a number of potential problems. In particular, an overly rigid enforcement of this division could lead to offenders with mental illness and intellectual disability 'slipping through the cracks' and not receiving the treatment and care that they need, thereby exposing the community to greater risks. Further, without appropriate supporting systems, the Public Advocate believed the Magistrates Court would be ill-equipped to deal with these complex issues.

The Public Advocate was disappointed by the response to the issues for people with intellectual disability who come into contact with the criminal justice system.

The Public Advocate argued for a greater investment in support systems and infrastructure for this cohort, as well as a more comprehensive and holistic review of the current fragmented legislative response.

Finally, there were a number of areas that, if pursued, represented a potentially dangerous infringement of people's rights. These included the ability to impose non-revokable periods on forensic orders and involuntary treatment orders; the change in review periods; the expansion of the Director of Mental Health's ability to impose monitoring conditions to people subject to involuntary treatment orders; and a reduction in safeguards for the use of restraint and seclusion.

The Public Advocate will continue to engage with this review as it progresses in 2014-15.

Improved safeguards

People with impaired capacity are exposed to significant risk of neglect, exploitation and abuse despite the attempts of legislative and other systems that seek to ensure that the necessary safeguards are in place.

Safeguarding against neglect, exploitation and abuse is the responsibility of multiple systems and multiple agencies. The Public Advocate remains concerned that people with impaired capacity are at risk of their human rights being compromised in the name of providing support and/or treatment. Identifying and raising the profile of this risk remains a priority for the work of the Office.

Positive behaviour support and the regulation of restrictive practices

During 2013-2014, the Public Advocate has been engaged with the review of the regulation of restrictive practices in the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*.

People with intellectual disability or cognitive impairment who are subject to restrictive practices (such as containment; seclusion; physical, chemical and mechanical restraint; and/or restricted access) represent a significantly marginalised and vulnerable group of individuals.

In July 2013, the Department of Communities, Child Safety and Disability Services released a Discussion Paper seeking feedback on Queensland's restrictive practices regulatory framework with a view to both streamlining processes and reducing red tape for service providers while maintaining safeguarding adults with challenging behaviours causing, or at risk of causing, physical harm.

In responding to this Discussion Paper and the resultant legislative amendments that were proposed, the Public Advocate took the opportunity to highlight the importance of also focusing on the broader practice and system initiatives aimed at building the capacity of the sector to implement positive behaviour support approaches to reduce and eliminate the need to use restrictive practices.

Given that it had been five years since the implementation of the regulatory regime and the other systemic reforms aimed at reducing the use of restrictive practices in the disability services sector, the Public Advocate was concerned that there was little or no evidence presented to determine the effectiveness of the regulatory regime to date in reducing or eliminating the need to use restrictive practices.

The Public Advocate also called for increased transparency in relation to the investment in and effectiveness of the clinical, training and research resources allocated to reducing and eliminating restrictive practices. In particular the Public Advocate was interested in the effectiveness of the Specialist Response Service (SRS) and the Centre of Excellence for Behaviour Support in building the capacity of the sector to reduce the reliance on the use of restrictive practices and improve the quality of life of people with intellectual disability and challenging behaviour.

On 20 November 2013 the *Disability Services (Restrictive Practices and Other Legislation) Amendment Bill 2013* was introduced into the Queensland Parliament. The Bill sought to make amendments to the regulatory framework for restrictive practices in the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*.

The Public Advocate appeared before the Health and Community Services Committee. During her Committee presentation the Public Advocate sought to highlight the vulnerable nature of those clients of funded disability services who are subject to restrictive practices.

In particular the Public Advocate reinforced that the 'challenging behaviours' (as they are known) exhibited by people with intellectual disability or cognitive impairment are actually the means by which the person expresses/communicates messages that have otherwise not been 'heard' by those supporting them. Challenging behaviours therefore represent a failure of the system around the person, not of the person him/herself.

With this context in mind, the Public Advocate was concerned that the Bill was weighted more in favour of addressing resourcing issues for service providers, than on upholding the rights of the people it purports to protect.

For example, rather than consolidating the gains made in the sector by 'upping the ante' (or at minimum, maintaining the status quo), the Public Advocate argued, this Bill downgraded existing safeguards by allowing immunity for service providers to use restrictive practices without necessarily having an appropriate approval or consent.

The *Disability Services (Restrictive Practices and Other Legislation) Amendment Act 2014*, was assented to on 13 March 2014, although its provisions did not take effect until 1 July 2014. It made a number of changes to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*. These changes include:

- Amendments to the definitions of restrictive practices to clarify the purpose of the restrictive practice (that is that these practices are used in response to 'the adult's behaviour that causes harm to the adult or others');

- Providing that the use of medication to sedate a person to facilitate the provision of a single instance of health care to the adult is not chemical restraint;
- Changing the requirements of a positive behaviour support plan (including that a person who develops a positive behaviour support plan must have regard to the new 'model positive behaviour support plan');
- Removing the requirement to develop a short-term plan for a short-term approval of restrictive practices;
- Providing time-limited immunity (up to 30 days) from civil and criminal liability where a service provider has sought a short-term approval, or the consent of the Public Guardian as a guardian for a restrictive practice matter; and the consent or approval has not been decided before the existing approval or consent expires;
- Providing flexibility for the Queensland Civil and Administrative Tribunal to appoint a guardian for restrictive practice matters for up to two years (increased from one year);
- Removing (from legislation) the requirement for service providers to keep and implement a policy on the use of restrictive practices;
- Requiring a service provider to give a statement about the use of restrictive practices to the adult subject to restrictive practices and any person with a sufficient and continuing interest in the adult. The statement must explain why the restrictive practice is being used and how the adult and the interested person can make a complaint about, or seek review of, the use of restrictive practices; and
- Requiring service providers who use restrictive practices to report to the department on the use of restrictive practices in accordance with the details set out in a regulation (this regulation has not yet been set).

The Public Advocate was represented on the Department of Communities, Child Safety and Disability Services' Restrictive Practices Implementation Working Group in 2013-14 which provided advice on the implementation of the legislative, policy and practice reforms. The Public Advocate used this opportunity to highlight the importance of safeguards for people with disability subject to restrictive practices.

Once the reporting requirements for disability services that use restrictive practices commence, the Public Advocate along with others will be entitled to receive the information obtained by the department. This will assist the Public Advocate to monitor the use of restrictive practices in Queensland, including the efficacy of the current regime in achieving its purpose in respect of reducing and eliminating the use of restrictive practices.

Appropriate decision-making mechanisms

The United Nations *Convention on the Rights of Persons with Disabilities* recognises that the extent to which a person's impairment may become 'disabling' is dependent on the interaction between the person and their environment.

In the course of our work, we seek to critically analyse the extent to which the systems that are the focus of our research and advocacy endeavours make adjustments and/or provide adequate levels of support (ie reasonable accommodation) to ensure they are sufficiently inclusive and responsive to differing levels of ability. In this way, the Office seeks to ensure that such systems enable effective and increasing levels of participation by people with impaired decision-making capacity.

Building upon this, it is increasingly being recognised in contemporary approaches to supporting people with cognitive impairment that adults with impaired capacity may be able to make decisions for themselves with appropriate support and/or may be able to develop skills in decision-making over time.

Such understandings should underpin the way in which support is provided, ensuring that opportunities to build decision-making capability are offered and pursued.

In accordance with this, the extent to which systems and agencies within systems employ reasonable accommodation in the course of engaging adults with impaired capacity in the making of decisions in relation to their own lives is a key focus for the work of the Office.

Decision-making support

Taking account of the obligations arising from human rights instruments such as the Convention, the State of Queensland has a duty to provide access to adequate and appropriate support to people with impaired decision-making capacity so they can exercise their right of legal capacity.

Contemporary discourse uses the term 'supported decision-making' to refer to a process by which a range of supports may be used to enable a person to make their own decisions. Ensuring that the person who is affected by the decision remains at the centre of the decision-making process is intrinsic to the provision of decision-making support.

Some people, however, may experience more difficulty with making a decision than others. The Convention imposes obligations on the State to, where required, provide support

to people with disability in a way that allows the person to express their will and preferences, thereby enabling them to make decisions about their own lives.

This support may involve helping the person to understand that a decision needs to be made and what their options and choices are, and/or by communicating the person's intentions to others. A decision-making supporter may also assist by helping other people understand that a person with disability has rights; a history, aspirations and goals; and is a person who is capable of exercising their legal decision-making capacity with or without support.

The practice of a supporting a person to make their own decision/s occurs everyday, often in an informal way. This is not to say, however, that these practices occur without issues or challenges. Despite the challenges, which we need to better understand and address, people have the right to make their own decisions wherever possible, and to be provided with support to do so if required.

In contrast to providing support to a person to make their own decisions, substitute decision-making typically refers to situations where a decision for a person is made by another person or entity such as a tribunal (i.e. a person does not make their own decision). This practice can occur informally or may involve an attorney or an appointed guardian or administrator.

Ongoing debate surrounds the issue of whether substitute decision-making is in conflict with the intent of article 12 of the Convention. This is because substitute decision-making typically involves a determination that a person's capacity to make their own decision for a matter is impaired and another person is then appointed to make the decision on their behalf. The debate mirrors concerns that substitute decision-making reflects a traditional paternalistic approach towards decision-making rather than supporting the participation and autonomy of people with disability.

Regardless of views about the compatibility of guardianship laws with the Convention, there is now general recognition, underpinned by the paradigm shift that the Convention heralds, that the focus must move from the challenges facing a person with disability to the supports that should be provided to enable them to make decisions and exercise their legal capacity. This means that the appointment of a substitute decision-maker should not preclude efforts to support a person to make their own decisions.

People can be supported to maximise their autonomy and legal capacity, and develop/maintain decision-making ability when subject to formal substitute decision-making.

The principles that underpin the *Guardianship and Administration Act 2000* (Qld) and the *Powers of Attorney Act 1998* (Qld) align with the paradigm shift declared by the Convention.

It is increasingly recognised that the focus must shift from what a person cannot do to the supports that should be provided to enable people to make decisions and exercise their legal capacity.

Given this paradigm shift and the contemporary discussion in relation to the provision of decision-making support for people deemed to have impaired decision-making capacity, it is timely to explore the systemic barriers and enablers to protecting and supporting the right of a person to make their own decisions.

The past year has seen the knowledge and understanding in relation to what may constitute effective decision-making support continue to evolve. There are a number of pilot programs underway across different jurisdictions within Australia, and ongoing research is occurring at both national and international levels, in the interests of generating an increasingly robust evidence base.

Many researchers and practitioners in Australia are keen to ensure that we are at the forefront of innovation within this space. To this end, in addition to the Office's own research in this area, we have been contributing to the development of a research proposal that, if successfully implemented, will address many of the gaps in current knowledge, particularly in relation to the practical aspects of providing effective decision-making support.

Guardianship reform

In 2013, the Public Advocate was part of a Review Committee that considered all 317 recommendations from the 2010 Queensland Law Reform Commission (QLRC) report *A Review of Queensland's Guardianship Laws*.

On 30 June 2014, the Government's response to the QLRC Report was released, making clear the Government's commitment to ongoing reform in this area.

The Government's response will occur in 2 stages. Stage one is currently underway and will inform guardianship reform in 2014-15. Stage 2 will subsequently deal with those recommendations requiring more substantive change.

The Public Advocate will remain engaged in the reform of Queensland's guardianship laws as it progresses.

Furthermore, it is hoped that the Office's work on decision-making support for adults with impaired capacity may assist in further enhancing Queensland's guardianship system.

Sustainable outcomes

People with impaired capacity have needs that extend across many different service systems, including (but not limited to) education, employment, housing, health and disability. The importance of ensuring that these systems work together in a cohesive and integrated way is integral to the provision of effective support that ensures that people with impaired capacity are able to contribute equally as valued members of society.

The evolution of the primary systems supporting adults with impaired capacity in Queensland, in particular the significant national reforms occurring in relation to disability services and aged care, and the incremental changes to the state-based guardianship and mental health systems, bring significant opportunities as well as a variety of risks.

Given the complexities that come with understanding any 'new' system, it is important to ensure that accurate and sufficient information is available so that people seeking to access supports are able to successfully navigate these systems. Further it is important to recognise and attend to the inter-relationship between these 'specialist' systems and the mainstream systems that provide complementary supports to people with impaired capacity.

To this end, the Office has sought to actively contribute to discussion and debate about key issues that have the potential to impact people with impaired capacity who may seek to access supports through these systems. A key focus of the Office's contribution to these discussions has been ensuring that appropriate attention is given to those aspects of the complementary systems that may require change, additional infrastructure and/or increased safeguards to adequately attend to anticipated gaps that may arise.

National Disability Insurance Scheme (NDIS)

On 1 July 2013, the National Disability Insurance Scheme (NDIS) commenced operation in four trial sites: Tasmania (for young people aged 15-24); South Australia (initially for children aged 5 years and under); and in the Barwon area of Victoria and the Hunter area in New South Wales for people up to age 65.

The National Disability Insurance Scheme represents a significant step toward addressing the deficiencies of the current systems that exist across Australia and a meaningful advancement toward the social inclusion and economic participation of Australians with disability.

Queensland is scheduled to commence implementation of the NDIS from July 2016. In the interests of ensuring Queensland's readiness for the scheme, the National Disability Insurance Agency (NDIA) has established a presence in Brisbane and Townsville.

A range of issues have been noted as being evident in jurisdictions where the NDIS has already commenced. In particular the relatively low numbers of adults who have appointed guardians and/or administrators who have been accepted as participants under the NDIS, and the limited extent to which guardians, administrators and/or the bodies that they represent have been sought out to provide input to the implementation both at the individual and broader systemic level.

At the individual level, an inherent risk is that people with impaired capacity may well be negatively impacted in the course of designing and procuring supports in the absence of a holistic understanding of all of the factors relevant to that person's circumstances.

For example, while it is laudable that Australia's NDIS operates under a mandate that enables individuals to have greater choice and control over decision-making in respect of the supports that they access to attend to their needs, this may present challenges for people with impaired decision-making capacity. It is therefore imperative that adequate and appropriate supports and safeguards are put in place to enable people to do so.

Further, it is increasingly evident that numerous different elements of the scheme are still 'under development', even while the NDIS continues to be progressively implemented in successive trial sites.

If this iterative process of design and development occurs in isolation of a comprehensive and thorough understanding of the often unique issues that confront adults with impaired capacity, there is a risk that the scheme may not include adequate safeguards. This has the potential to significantly jeopardise the potential for successful and sustainable long-term outcomes for adults with impaired decision-making capacity.

There is also an ongoing risk that people with impaired capacity who experience additional levels of vulnerability (for example, as a result of homelessness, being of indigenous background, residing in remote areas, etc) may remain 'hidden' in the absence of targeted strategies to identify and work with such individuals to enable the provision of supports. Given the diversity of Queensland's population and geography, these considerations are of particular relevance to ensuring Queensland's preparedness to transition to the NDIS.

Aged care reforms

On 20 April 2012, the Federal Government released the *Living Longer Living Better* aged care reform package, a comprehensive 10-year plan to reshape aged care and build a better, fairer and more nationally consistent aged care system. The system in operation is now being referred to as *My Aged Care*.

While the first tranche of reforms commenced in 2013, the most recent changes, which commenced on 1 July 2014, have brought with them a range of concerns.

Notably these concerns relate to the increased complexity of decision-making (particularly with respect to the financial aspects of aged care placements), uncertainty within the sector in respect of operationalising the reforms, and the inadvertent pressures arising for agencies that provide complementary services to people who are ageing, including guardianship and administration systems.

At the state level, these national changes sit alongside the reform of the health system in Queensland, initiated in 2012, whereby responsibility and accountability has been decentralised and devolved to local Health and Hospital Service Networks and the Boards that govern them.

Under the new service delivery model, there is a service agreement in place between the Department of Health and each Hospital and Health Service (HHS) for the provision of public health services. The service agreement defines the health services, teaching, research and other services that are to be provided by the HHS and the funding to be provided to the HHS for the delivery of these services. It also defines the outcomes that are to be met by the HHS and how its performance will be measured.

Alongside the aged care reforms, the changes to Queensland's health system are a notable factor in the shifting dynamics that are increasing the pressure on the guardianship and administration system in Queensland.

The coming year will be an important one in terms of understanding and addressing the systemic pressures that are arising through the interplay between the state and federal systems.

Progress report and future directions for continuing deinstitutionalisation

A summary of the institutionalisation of people with disability in Queensland

The history of institutionalising people with intellectual disability in Queensland is similar to the history of institutionalisation of people with intellectual disability in many other western and developing countries, including the United States and the United Kingdom.

Up until the 1980s in Australia, it was common practice for people with disability to reside in large institutions on the outskirts of cities. These institutions housed both children and adults with disability in congregate living environments, with all day-to-day decisions made on their behalf by staff.

Originally people with intellectual disability in Queensland were placed in asylums and described as 'lunatics' or 'insane'. Early 'reforms' in the 1960s saw the separation of many people with intellectual disability from people with mental illness and the development of training centres and other facilities specifically for people with intellectual disability.

Queensland, like other Australian states, experienced significant closures of large institutions and the relocation of people with disability to community-based living in the 1980s and 1990s. This coincided with increases in community-based accommodation provided by government and non-government services. This movement was also given impetus by investigations into cultures of abuse and neglect of people with disability in some of these facilities.

At some point however these 'reforms' were stalled and a significant number of people with intellectual disability or cognitive impairment remain living in long-stay health care facilities in Queensland.

Creating the argument for change

Of great concern to the Public Advocate is that while many institutional living environments have now closed and there has been an increase in community-based living arrangements, there are still many people with disability living in institutional type settings who are segregated from the community. Many of these individuals have limited opportunities to increase their autonomy, capability, participation and inclusion.

In response to her concerns, the Public Advocate distributed a **Position Statement** (on continuing the deinstitutionalisation of people with disability in Queensland) in June 2013 calling on the Queensland Government to carefully develop a plan, based on thorough consultation, to enable increased autonomy for people with disability living in 'institutional' settings while facilitating access to increasingly appropriate support arrangements.

Coinciding with the release of this position statement, the Public Advocate also put out a call for submissions in relation to this issue.

The Office of the Public Advocate received 21 submissions from interested parties, including family members of people with disability residing in institutional settings, community organisations, advocacy organisations, staff of health facilities and a joint submission from the Queensland Health and the Department of Communities, Child Safety and Disability Services.

Information was also sought from Queensland Health about the number of people who continue to reside in long-stay health care facilities, and a response sought from both Queensland Health and the Department of Communities, Child Safety and Disability Services about the extent to which they are working together to plan for more appropriate community-based accommodation and support services for these individuals.

The Public Advocate also visited a number of health facilities including Baillie Henderson Hospital in Toowoomba; Halwyn Centre at Red Hill; Jacana Acquired Brain Injury Service at Bracken Ridge and Casuarina Rehabilitation Centre and spoke to staff and residents there.

The status for people with disability still residing in institutional environments in Queensland

The Public Advocate found that as at May 2013, there remained **271 people with intellectual disability or cognitive impairment residing in health facilities**, inclusive of mental health services, in Queensland.

While acknowledging the individual circumstances of each resident, those who remain in long-stay health care facilities can be broadly characterised within two groups:

- First there are many people, notably people with intellectual disability, who 'missed out' on earlier deinstitutionalisation and have remained living in institutions for up to 65 years. Many were initially placed in these institutions as babies or small children,

but for various reasons were denied the opportunities that were given to other people with similar levels of disability to live in the community. Others came to these facilities later in life following a breakdown in supports and/or the inability to access the necessary services to be supported in the community.

- Second, there are people with acquired brain injuries (ABI) residing in hospitals and other health facilities who are unable to access crucial opportunities for rehabilitation and reintegration back into community. Some have lived in these facilities up to 35 years.

Of the 271 people who were the subject of the report, **131 people** with intellectual disability or cognitive impairment are long-stay residents in **public health facilities** inclusive of residential health care facilities, Baillie Henderson Hospital and the Park Centre for Mental Health; a total of **12 people** are residing in **public aged care facilities**; and **30 people** are residing in **various hospitals and other health services**. A further **98 people** were residing in **mental health services**.

People with intellectual disability or cognitive impairment are residing for long periods of time in four main types of state government health care facilities in Queensland:

- Public residential health facilities:** These include places that were originally built for people with intellectual disability to reside such as Baillie Henderson Hospital (where people with intellectual disability have resided since it opened in 1890) and Halwyn Centre at Red Hill, as well as the Park Centre for Mental Health, Casuarina

Rehabilitation Centre and the Jacana Acquired Brain Injury Services at Bracken Ridge and Brighton. This group of facilities has the largest proportion of people with intellectual disability or cognitive impairment residing in them. **(131 people/49% - see Table 1)**

- Public aged care facilities:** The Department of Health continues to operate a small number of public aged care facilities. People under 65 years with intellectual disability or cognitive impairment are residing at Eventide (Charters Towers), North Rockhampton Nursing Centre and the Moreton Bay Nursing Care Unit. This group of facilities have the smallest proportion of people with intellectual disability or cognitive impairment residing there. **(12 people/4%)**
- Hospitals and other health services:** There are also patients with intellectual disability or cognitive impairment in Cairns Base Hospital, Caboolture and Kilcoy Hospitals, Fraser Coast, Maryborough and Hervey Bay Hospitals, Gold Coast Hospital, Logan Hospital, Kirwan Health Campus, Princess Alexandra Hospital, Royal Women’s Hospital, and Redcliffe Hospital. Some of these hospitals, such as the Princess Alexandra Hospital, have specific Brain Injury Rehabilitation Units. **(30 people/11%)**
- Mental health services:** Queensland has a network of mental health services that include both in-patient treatment and support in the community. These services have the second-highest population of people with intellectual disability or cognitive impairment residing there. **(98 people/36%)**

Table 1 Long-stay patients (under 65 years) with intellectual disability or cognitive impairment residing in public residential health facilities

	Baillie Henderson Hospital	Casuarina Rehabilitation Centre	Halwyn Centre	Jacana ABI Service (Bracken Ridge)	Jacana ABI Service (Brighton)	The Park Centre for Mental Health
Median age (years)	57	52	38	44	53	36
Youngest (years)	36	40	22	22	40	22
Eldest (years)	64	61	63	57	62	59
Females	17	<5	18	<5	8	<5
Males	9	<5	26	30	<5	5
Shortest length of stay (years)	10-15	<5	5-10	<5	5-10	<5
Longest length of stay (years)	60-65	10-15	30-35	30-35	10-15	10-15
Median length of stay (years)	40-45	5-10	25-30	15-20	10-15	10-15
Aboriginal and Torres Strait Islander	0	0	0	<5	0	<5
Total = 131	26	8	44	33	12	8

Source: Department of Health (July 2013)

Submissions to the Public Advocate confirmed that, despite the best intentions of staff, in many cases the models of care provided in health facilities where people with intellectual disability or cognitive impairment reside do not meet contemporary standards for people with intellectual disability or cognitive impairment. In particular, support is not provided to develop the functional skills and capability of people with disability. Neither do they receive adequate support to ensure the best outcomes for physical, social and emotional well being. There are also few opportunities provided to enable choice or to participate in the community. A family member of a resident in a long-stay health care facility stated:

“It is of great concern to me to witness how Sophie’s* support needs have increased over time. Prior to being placed in the Centre she had limited speech, could feed herself, eat ordinary food once it was cut into bite sized pieces, walk small distances with support, support herself sitting up, and took minimal medication and had relative good health.

What I witness now is someone who has lost speech and language, lost ability to feed herself (eat and drink independently), lost ability to swallow solid food, lost all ability to walk, lost teeth, lost her good health (now taking many medications for systematic deterioration of eating, digestion, elimination), and her muscles have atrophied and stiffened.

Sophie has also been denied the right to a good education and work opportunities, and the right to develop healthy relationships. Instead she has lived a wasted life with a lack of purpose, loneliness and isolation, in a segregated environment filled with a medical routine.”³

Many people in these facilities sleep in hospital beds in ‘ward like’ environments, some have done so for up to 65 years, despite these places being described as their ‘homes’ and recognition that these arrangements are not required for ‘medical care’. The facilities are often noisy with little privacy. They are staffed by nursing and other health staff, and a medical model of care predominates. The low staff-to-resident ratio means that most of the day is taken up with personal care with few opportunities for personal support or to learn activities of daily living. Most things are done ‘to’ or ‘for’ residents. The size and nature of the facilities mean that there are rigid routines, for example strict ‘bed times’,

* The resident’s real name and the name of the facility have not been used.
³ Confidential, Submission No 7 to the Public Advocate, *People with Disability in Long-Stay Health Care Facilities*, 2 August 2013.

regardless of a person’s age or desires they may have for a routine that suits their personal needs or wishes. Access to the community is limited and for some non-existent.

It was submitted to the Public Advocate that, under these conditions, people experience deterioration in their health and wellbeing and lose crucial skills (including communication skills) that would enhance their ability to live a good life in the community.

Parents of a man with intellectual disability who has been living in a health facility for 25 years submitted to the Public Advocate that they had given up hope of their son ever moving from the facility in which he was residing, or of him receiving better care.

These parents describe the care provided to Stuart* as being like hospital care. For example, everyone eats together, the same thing at the same time. Everyone must go to sleep at the same time, early evening, despite their age. All residents sleep in hospital beds. Stuart has slept in a hospital bed in a ward-like environment for the past 25 years, even though this is his ‘home’. He does not get any opportunity to learn daily living skills like cooking, as the staff do everything for him.

They described how over the years their son had not only been denied the opportunity to learn and develop, but that he has greatly deteriorated. For example, despite his non-verbal status, when Stuart was younger, they said, he showed more potential for understanding written words and numbers and even had an interest in maths.

However the facility where he resides has never worked to develop this potential or even to provide assistance with communication. They believe that despite his ‘limitations’ even now, after 25 years of living in the facility, Stuart is capable of doing more than he currently does.

Stuart’s parents believe their son should be living in the community and could live in the community with support and appropriate accommodation. They were concerned, however, that their son should not be placed in another institutional-type environment, for example in a home with other people with disability.

While assured of anonymity, the parents were greatly concerned not to be identified because they believed in some way it would affect their son’s support.

The family are still waiting on funding for Stuart to move out of the facility, but they are now getting older and, while still concerned for his future, have almost ‘given up’.⁴

* The resident’s real name and the name of the facility have not been used.

In the 2012-13 financial year, it cost the Queensland Government approximately \$76.28 million to support people with disability who are residing in health care facilities. The Public Advocate contends that at least some of these funds could be re-allocated to provide people with disability living in health care facilities with more appropriate models of care and support in the community.

Towards further deinstitutionalisation

The Public Advocate's report – *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation* – was tabled in Parliament on 7 November 2013.

The Public Advocate made a number of recommendations in Part 7 of the report including, amongst others, that there should be:

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

What has happened since the report was tabled?

The Queensland Government

The Queensland Government has commenced the development of a Joint Action Plan – *Transition of long-stay younger people with a disability from Queensland public health facilities* (the Joint Action Plan). This Joint Action Plan is being developed in partnership between the Department of Communities, Child Safety and Disability Services (DCCSDS), Queensland Health and the Department of Housing and Public Works (DHPW). A Steering Group comprising representatives from DCCSDS, Queensland Health and DHPW as well as the Department of Premier and Cabinet and Queensland Treasury and Trade oversees the work undertaken as part of the plan.

Queensland Health

In December 2013, the Director-General of Queensland Health wrote to all Hospital and Health Boards to ask them

to collaborate with their regional counterparts from DCCSDS and the DHPW to support the Joint Action Plan. As a result, Queensland Health has reported that as at 30 June 2014 this collaboration has enabled 25 long-stay younger people with a disability to be supported to move from Queensland public health facilities to more appropriate living arrangements in the community.

Amendments have also been made to the *Hospital and Health Boards Regulation 2012* to provide for the disclosure of patient information to nominated Government entities which will facilitate the sharing of relevant client data with DCCSDS and DPWH to support action under the Joint Action Plan as well as allow preparation for the implementation of the National Disability Insurance Scheme (NDIS) in Queensland.

Department of Communities, Child Safety and Disability Services (DCCSDS)

DCCSDS report that the Joint Action Plan partners are developing a protocol to support and enhance collaboration locally and support more robust person centred planning processes. This will inform the key actions in 2014-15 that will focus on identification of all long-stay patients, as well as collaborative, individualised and person-centred assessment and planning for those people who are willing to engage with the plan partners. DCCSDS see this work is important in ensuring current and accurate information regarding this group of people, thus enabling the resources required to support transition to community living to be identified.

In 2013-14, \$2 million was allocated to support transitions.

Community groups and alliances

Importantly, the issue is also being driven by a variety of community organisations and alliances.

A number of community forums have been held bringing together government and non-government agencies, advocacy organisations, and people with disability and their families and carers to discuss this important issue.

Shortly after the release of the Public Advocate's report, a Joint Solutions Roundtable was convened by the Young People in Nursing Homes National Alliance. This took place in early December 2013. A further Joint Solutions Forum was held in February 2014. Both forums were convened to inform and discuss the call for a Joint Action Plan in Queensland to address the issue of people with disability living in hospitals and long-stay health care facilities. The forum heard from people with disabilities living in these facilities; their families; government representatives working on the Joint Action Plan; as well as representatives from the National Disability Insurance Agency.

These are just some of the activities that are occurring.

⁴ Confidential, Submission No 2 to the Public Advocate, *People with Disability in Long-Stay Health Care Facilities*, 10 July 2013.

Public Advocate's comments on progress to date:

I am pleased by the leadership of community groups in pursuing the engagement of government in relation to this important issue.

In my role as Public Advocate, I will continue to seek regular reports from the key government departments on their progress towards ensuring people with disability in long-stay health care facilities are transitioned to more appropriate models of support with maximum opportunities for choice and control.

To this end, I welcome the initiation of the Joint Action Plan by Queensland Government and the progress made to date in transitioning people from public health facilities.

I have not seen the 'Joint Action Plan' nor has it been publicly released. This means that neither I nor other community stakeholders have had the opportunity to provide feedback or comment. Importantly it also means that, to date, there has been little transparency in this process.

Pursuing outcomes

The Public Advocate's inaugural systemic advocacy report, *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation* was tabled in Parliament on 7 November 2013. However the work required to ensure progressive outcomes does not end here.

The Public Advocate will continue to work with Government, and with non-government service providers and agencies to identify and address issues emerging in the course of implementing the Joint Action Plan.

The Public Advocate will also seek regular reports from the key government departments on their progress towards ensuring people with disability in long-stay health care facilities transition to more appropriate models of support that comprise a range of options from which to choose.

Office of the Public Advocate – Performance

Key Result Area 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

Our credibility and ability to influence decision-makers to promote positive change relies on a robust approach to knowledge and evidence.

In 2013-14, the Office dedicated a significant component of its resources to building the evidence base to inform future planning and systems improvement. The initiatives included both in-house research activities and leveraging partnerships with external parties.

Our research projects

To assist in building the evidence base, the Office has led the development of some unique concepts and innovative projects. Some projects initiated by the Office are undertaken in partnership with other stakeholders, while others are led by the Office and draw on input from the sector as part of developing the necessary evidence base.

Finalised Projects

The following research and advocacy projects were finalised during 2013-14.

People with intellectual disability or cognitive impairment residing long-term in health facilities in Queensland

Details regarding the research and advocacy work being undertaken in relation to continuing deinstitutionalisation in Queensland can be found in the preceding section of this report entitled *Progress report and future directions for continuing deinstitutionalisation*.

While the first stage of this work concluded with the tabling of the Public Advocate's report – *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation* – in Parliament on 7 November 2013, ongoing work is occurring to ensure necessary action in respect of facilitating outcomes for people residing in institutional environments in Queensland.

Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland

In late 2012, the Office of the Public Advocate partnered with the Community Visitor Program and the then Office of the Adult Guardian (now Office of the Public Guardian) to conduct an inquiry into the prevalence of, and reasons for, the use of electronic monitoring at disability accommodation sites in Queensland.

Electronic monitoring is the process of capturing, or arranging to potentially capture, information about a person using an electronic device. There are many ways that this information can be captured but the most common is through the use of audio or visual electronic devices. These devices include video cameras, still cameras and audio monitors such as baby monitors or intercoms.

The primary data collection for this research occurred in two phases. The first phase was a census of 'visitable' disability accommodation sites conducted by the Community Visitor Program (CVP). The second phase was a voluntary online survey of the organisations that provide accommodation support services for people with disability in Queensland.

The final report – *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland* – was released by the Public Advocate to coincide with Privacy Awareness Week (4-10 May 2014) and was tabled in Parliament on 21 May 2014.

Findings

- Used in 13% of the disability accommodation sites surveyed, the inquiry found that electronic monitoring was a significant issue, but not yet common place.
- Of concern to the Public Advocate was that only 31% of the sites that used electronic monitoring had a policy framework to guide the way in which electronic monitoring was being used.
- Furthermore electronic monitoring was not always carried out in accordance with these policy frameworks where they did exist.
- Many sites were also found to lack appropriate procedures to seek, obtain and record consent from their residents prior to using electronic monitoring.

The report has been received positively by organisations in the disability sector that utilise electronic monitoring, many of which have indicated their interest in improving their policy and practice in respect of such technologies.

With assistance and advice from the Office of the Information Commissioner and the Office of the Public Guardian, the Public Advocate has since developed two fact sheets. The first is intended for adults living in supported accommodation, and their families and carers. The second factsheet is targeted at the organisations that use electronic monitoring, their sites and support staff.

The key issues that disability organisations should be aware of if they use electronic monitoring are summarised below.

The use of electronic monitoring by disability organisations

Every organisation that uses electronic monitoring should have a policy in place to govern its use. The policy should conform with both legal and human rights obligations as well as best practice standards. In summary, a policy should include information regarding:

- Recognition of the right to privacy (including the right to be protected from arbitrary or unlawful invasions of their privacy) for all people, including people with disability;
- The need to first objectively assess the need to use electronic monitoring before it is applied to a person, including an assessment of whether it is directly related to a *bona fide* purpose of the organisation and whether there is any less invasive option available for achieving that purpose;
- The importance of talking to the person about the intention to use electronic monitoring in an honest and open manner;
- The need to obtain consent for electronic monitoring either from the person who is to be monitored (if they have capacity to provide consent) or an appropriate formal or informal decision-maker;
- The importance of secure storage of the products of electronic monitoring and the requirement not to disclose this information to another person or organisation unless authorised to do so by law or with the consent of the person to whom the information relates;
- The process by which the use of electronic monitoring for an individual will be reviewed; and
- The process by which complaints about the use of electronic monitoring will be handled.

Such a policy should be complemented by targeted education and/or training for staff to ensure its consistent application in practice.

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

In the second half of 2013, the Office of the Public Advocate engaged a student from the Queensland University of Technology to undertake a small-scale project into relationship issues for adults with impaired capacity.

The findings from this research confirmed that there are numerous barriers that serve to disempower adults with impaired decision-making capacity when it comes to engaging in relationships of their choosing, whether sexual or otherwise. Not least of these barriers is the Queensland Criminal Code, which makes it an offence to engage in sexual activity with an adult with an “impairment of the mind”, a term that is defined quite broadly.

Inherent tension exists between how best to provide adequate and appropriate support to uphold the right of an adult with impaired capacity to pursue a sexual relationship (without contravening these legislative provisions) while ensuring appropriate protections and safeguards to prevent abuse and/or exploitation.

While, in theory, supporting an adult to engage in a sexual relationship should be guided by the adult’s capacity to provide informed consent, the process by which a person’s capacity in this respect might be assessed is not well developed.

Prompted by the research undertaken in the course of the student placement, the Office conducted a jurisdictional analysis to compare and contrast the legislative landscape across each of the different states and territories in Australia. This was subsequently presented at a forum in late June 2014.

In addition to the legislative barriers that have the potential to limit an adult’s ability to engage in relationships of their choosing, there is a limited availability of education and other supports that might strengthen an adult’s capacity to make decisions in respect of such matters and to engage safely in sexual activities where they choose to do so.

Furthermore, these systemic factors exist against the backdrop of a vastly different social and environmental context that sees many adults with impaired capacity miss out on the ‘natural’ process of exploration typically undertaken by young people. Differences are also evidenced in caregiver expectations with the common perception that sees many adults with impaired capacity as the ‘perpetual child’; someone for whom relationships, particularly sexual relationships, are not even considered to be an option.

The reality is that sexuality remains a highly sensitive and frequently neglected issue when considering how best to support adults with impaired capacity.

Continuing Projects

With the stabilisation of the Office of the Public Advocate, we have embraced the opportunity to initiate a number of longer-term projects in relation to key systemic issues impacting adults with impaired decision-making capacity.

Continuing deinstitutionalisation in Queensland

Details regarding the research and advocacy work being undertaken in relation to continuing deinstitutionalisation in Queensland can be found in a previous section of this report entitled *Progress report and future directions for continuing deinstitutionalisation*.

While the first stage of this work concluded with the tabling of the Public Advocate's report – *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation* – in Parliament on 7 November 2013, ongoing work is occurring to ensure necessary action in respect of facilitating outcomes for people residing in institutional environments in Queensland.

In doing so, the Office is not only focussing on those individuals who were the subject of the report tabled in Parliament but is also taking account of the broader cohort of people residing in institutional environments in Queensland. In doing so, the Office recognises that institutional environments are not just generated by the existence of bricks and mortar, but also by the nature of, and way in which, support is provided to residents.

Decision-making support for Queenslanders with impaired capacity

In early 2013 the Office initiated a research project examining decision-making support for Queenslanders with impaired capacity, with a focus on the extent to which relevant provisions of the *Guardianship and Administration Act 2000* are translated into practice.

The aim of the research is to identify the systemic enablers and barriers to protecting and supporting the right of the person to make their own decisions. The research will explore this within the context of Queensland's public guardianship system. It will also highlight opportunities for systemic enhancements that reflect contemporary developments in decision-making support for people with impaired capacity.

The Office is working with a range of expert stakeholders engaged in the guardianship system including the Public Guardian; QCAT; and the Public Trustee to identify opportunities for systemic enhancements that reflect contemporary developments in decision-making support for

people with impaired capacity. The Office has also established an external Advisory Group to provide expert knowledge and strategic advice throughout the project.

Foundation documents

In early 2014, the Office of the Public Advocate published a suite of four documents that form the foundation of this research. These documents are described further below and are available on the Public Advocate website.

The *conceptual framework* presents the ideas that underpin the research. It articulates the 'lens' through which the Office of the Public Advocate will view and analyse the aspects of the system that enable or constrain the extent to which the philosophy and principles of the decision-making regime are practiced.

The *literature review* explored recent debate in relation to current guardianship systems, in particular the degree to which contemporary guardianship recognises and protects the autonomy and self-determination of people with disability. As supported decision-making is central to many of these discussions, the literature review also explored the current ways in which supported decision-making is conceptualised and put into practice in Australia and selected overseas jurisdictions.

The *synopsis of the legislation underpinning Queensland's guardianship system* provides a summary of and an annotated guide to those provisions in the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* that relate to supporting the decision-making of adults who interact with the guardianship and administration system.

The *targeted overview of guardianship legislation* in other Australian jurisdictions similarly presents a summary of the relevant provisions in other states and territories respective legislation that lend support to maximising a person's decision-making autonomy and the use of informal supporting mechanisms.

Work to be completed

A range of qualitative and quantitative methodologies are being employed, with information to be gathered through interviews with members of the Queensland Civil and Administrative Tribunal (QCAT), interviews with executives from the Office of the Public Guardian and the Public Trustee and surveys and discussion groups with the staff of the Office of the Public Guardian and the Public Trustee.

The process of interviewing members of QCAT commenced in June 2014. While not officially part of the final methodology, the staff involved in the project also observed a selection of QCAT hearings in May and June 2014.

A final report is expected to be released in early 2015.

Determining the representation of Indigenous persons in the substitute decision making systems

In early 2013, the Office of the Public Advocate commenced a project aimed at establishing the current number of Indigenous adults for whom either the Public Guardian and/or Public Trustee is appointed.

In cooperation with the then Office of the Adult Guardian (now Office of the Public Guardian), almost 9,500 records were extracted from their client management system. These records allowed the Office of the Public Advocate to undertake the first robust estimate of the proportion of Indigenous adults subject to public guardianship and/or administration. This research is significant because there is currently no publicly available quantitative data on the representation of Indigenous people within public guardianship and administration systems.

The analysis covered demographic variables as well as a range of factors pertaining to the administration of guardianship orders. Initial analyses found that a little over 19% of public adult guardianship appointments are made for Indigenous adults.

This figure was higher than expected given the proportion of the general population who are Indigenous and the rate of disability, however discussion with stakeholders who have a comprehensive understanding of Indigenous issues suggests that the figure may be closer to 12-13%.

While still higher than the rate of Indigenous adults subject to public administration, some stakeholders have suggested that this rate may actually be an accurate reflection of the expected representation given the range of extraneous variables that impact on the likelihood that an Indigenous adult may have impaired decision-making capacity. This requires further verification.

Indigenous people in public guardianship also have a higher rate of plenary orders (19%) compared to non-Indigenous people (14%). Where not plenary, orders still tend to be made for a greater average number of matters (5.6 matters) than those made for non-Indigenous people (4.7 matters). This suggests that public guardianship is both more common and more pervasive for Indigenous people than non-Indigenous people.

Within the client population of the Public Trustee, Indigenous people are represented at a rate equal to the general population once an allowance is made for the higher disability rate amongst Indigenous people (6.2%).

These findings have raised many questions about the range of variables that impact the level of representation of Indigenous adults subject to guardianship and administration, which the Office hopes to explore further.

New Projects

Effective complaints management systems for people with impaired capacity

The Office of the Public Advocate has initiated a staged approach to investigating effective complaints management systems for people with disability, with a focus on people with impaired decision-making capacity.

Complaints management systems are the mechanisms employed by government and non-government agencies that enable people to provide feedback and make complaints about the services delivered by the agency.

With the significant changes in the delivery of support and services to people with disability in Queensland heralded by the move to self-directed funding and the anticipated commencement of the NDIS in Queensland from 2016, complaints management systems that are inclusive of adults with impaired decision-making capacity and that facilitate the resolution of their concerns will be imperative.

What will we do?

Stage one of the project, which commenced in 2013-14, involves scoping and reviewing the concept of complaints systems as they relate to people with disability, particularly people with impaired decision-making capacity.

This has involved a comprehensive literature review as well as structured conversations with key service providers and advocates who work with people with impaired decision-making capacity.

The next stages of the project will involve:

- scoping the current complaints systems relevant to people with disability in Queensland who are accessing disability support services;
- assessing characteristics of 'best practice' in complaints systems to enable people with impaired decision-making capacity to effectively pursue complaints;
- exploring relevant legislation and legislative processes relating to the application of complaints management systems and their accessibility for adults with impaired capacity; and
- determining what changes might be required to Queensland complaints management systems and/or what enhancements may be required within the NDIS to provide adequate safeguards for people with disability and/or impaired decision-making capacity.

Deaths of people with disability in care

The Office of the Public Advocate has commenced a new research and advocacy project focused on the number and nature of deaths in care of people with disability in Queensland.

The Office has identified that there is a lack of publicly available information about the deaths of people with disability in care in Queensland to enable systemic monitoring and analysis. The reporting and analysis of information about the deaths of people with disability in care can be an important mechanism for identifying systemic issues related to access to and provision of appropriate support and health care that have a serious effect on people with disability, including the risk of premature death.

The *Coroners Act 2003* (Qld) provides the legislative framework for reporting, recording, investigating and inquiring into deaths in care in Queensland. The project being undertaken by the Office of the Public Advocate broadly includes a person with disability who, up until the time of their death, had been living in:

- a level 3 accredited residential service;
- a supported accommodation service provided or wholly or partly funded, by the Department of Communities, Child Safety and Disability Services (DCCSDS);
- the Forensic Disability Service;
- a residential service that is wholly or partly funded by Queensland Health or a Hospital and Health Service; or
- an Authorised Mental Health Service.

Data and information on the numbers of deaths in care as well as any investigative material or thematic analysis undertaken of deaths in care will be sought from relevant agencies including the State Coroner; DCCSDS; Queensland Health; and the Department of Housing and Public Works.

Existing legislation, policies and procedures for the reporting and analysis of deaths in care and of critical incidents will be examined in order to highlight any gaps in legislation, policy and procedure for the reporting, investigation and analysis of deaths in care.

Depending on the availability of relevant information, it is hoped that the project will also involve an examination of a number of case studies of people with disability who have died in care. An expert advisory panel will undertake the review and analysis of data and information (including investigative information).

The project is likely to be undertaken using a staged approach, with the first stage focussed on people with disability accessing services provided or funded by DCCSDS.

Monitoring and review activities

In accordance with the Public Advocate's function of monitoring and reviewing the delivery of services and facilities to adults with impaired decision-making capacity, the Public Advocate has continued to monitor the following review and reform activities being undertaken by the Department of Communities, Child Safety and Disability Services:

- Review of the Clinical Governance Framework and the clinical services resourcing and approach;
- Review of the service model and governance arrangements for the Forensic Disability Service; and
- Transition of Accommodation Support and Respite Services to the non-government sector.

The Public Advocate has sought updates in relation to these activities on a semi-regular basis, and will continue to monitor these reviews as well as any emerging reforms.

Research partnerships

The Office of the Public Advocate values partnering with other research agencies to further develop the evidence base in relation to issues impacting adults with impaired decision-making capacity.

In 2013-14, the Office was not actively engaged in any research partnerships, however has been liaising with leading academics and government and non-government stakeholders on potential partnership projects to address identified issues and complement work currently being undertaken the Office.

Key Result Area 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

Our strategic approach to communication and influence involves multiple communication channels and a mixture of products for disseminating information.

The effective translation of evidence helps reinforce our role to promote and protect the rights of people with impaired decision-making capacity.

In 2013-14, the Office produced a number of publications and engaged in a variety of forums to inform, influence and support key stakeholders.

Publications

In 2013-14, the Office of the Public Advocate refreshed its website to ensure its currency. In the course of doing so, the Office has also been progressively uploading new publications as they are developed.

The majority of submissions tabled by the Public Advocate in response to inquiries and other calls for submissions are now available on the Office of the Public Advocate website.

The Office of the Public Advocate released the first edition of the *Research and Advocacy News*, in July 2013. This newsletter provides updates on our research and advocacy projects and reports on outcomes as they become available.

The following publications were also released in 2013-14, all of which are publically available on the Public Advocate's website:

- ***People with intellectual disability or cognitive disability residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation*** – This report, tabled in Parliament on 7 November 2013, was the key deliverable arising from the first stage of the Public Advocate's research and advocacy efforts in relation to continuing deinstitutionalisation in Queensland.

- ***Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland*** – This report was released by the Public Advocate in Privacy Awareness Week (4-10 May 2014) and tabled in the Queensland Parliament on 21 May 2014. The Office continues to work with the sector to inform policy and practice development with respect to the use of electronic monitoring.
- ***Potential Population Factsheet*** – This publication was updated to reflect the most recent estimates of the number of adults with impaired decision-making capacity living in Queensland. These estimates drew on population projections published by the Australian Bureau of Statistics as well data from the 2009 Survey of Disability, Ageing and Carers.
- ***Decision-making support foundation documents*** – A suite of four foundation documents was developed to support the Office's research into decision-making support in Queensland's guardianship system. The suite includes the following documents, further details of which are provided on page 26 of this report:
 - The conceptual framework presents the ideas that underpin, and the lens through which the Office is viewing and analysing, the research.
 - The literature review explores recent debate in relation to current guardianship systems, in particular the degree to which guardianship recognises and protects the autonomy and self-determination of people with disability.
 - The synopsis of the legislation underpinning Queensland's guardianship system provides a summary of, and an annotated guide to, those provisions of Queensland legislation that relate to supporting the decision-making of adults.
 - The targeted overview of guardianship legislation in other Australian jurisdictions presents summaries of similar provisions that exist in the legislation of other states and territories.

Presentations

Community Visitor Program forum

The Office of the Public Advocate participated in the Community Visitor Program forum on 27 November 2013. At this event, the Public Advocate provided an overview of the current priorities for the Office, and engaged the Community Visitors in a discussion on systemic issues that they had identified in their work.

Queensland Civil and Administrative Tribunal's HuRD Training

On 25 September 2013, the Public Advocate provided an overview of the role of the Public Advocate to the Human Rights Division of QCAT, as well as discussing the projects currently being undertaken by the Office.

Queensland University of Technology – Lecture for Masters of Law unit 'Capacity, Guardianship and Administration'

The Public Advocate was engaged to provide a lecture for Masters of Law students at QUT on 27 September 2013. The lecture provided an overview of the guardianship system in Queensland. This was followed by a facilitated discussion in which the Public Advocate challenged students to debate the issues surrounding substitute decision-making. There was a particular focus on situations where the wishes, views and preferences of the adult are in conflict with what a decision-maker believes to be in the adult's 'best interests'.

DANA 5th National Disability Advocacy Conference

Disability Advocacy Network Australia (DANA) invited the Public Advocate to provide the opening address at their national conference on 31 October 2013. In her address, the Public Advocate discussed the importance of advocacy in upholding rights and ensuring outcomes for people with disability under the forthcoming NDIS. The Public Advocate further articulated some of the ways by which people with disability might drive change through their engagement with both community and government, and suggested practical strategies that might assist people to do so, notwithstanding the challenges that they may face.

WWILD-SVPA & CLA Paperbag Lunch Forum – Relationships and Sexual Education for People with Intellectual Disability: Current Approaches and Issues in Queensland

On 7 February 2014, the Public Advocate was invited to present the research work being undertaken by the Office in respect of issues for people with impaired capacity seeking to engage in relationships of their choosing at a 'Paperbag Lunch Forum' hosted by WWILD-SVP Association & Community Living Association.

Queensland Advocacy Incorporated's Disability Law Clinic

As part of the educational component of QAI's Disability Law Clinic, the Public Advocate was invited to provide a presentation and facilitate discussion about issues impacting adults with impaired capacity. This took place on 18 March 2014 and was well received by the students who attended.

QADA Guardianship Framework Training

Queensland Aged and Disability Services runs regular workshops on Queensland's guardianship system for interested participants. The Public Advocate attends these training workshops where possible to deliver an overview of the role of the Public Advocate and to outline the priority research and advocacy focus areas for the Office. In 2013-14, the Public Advocate attended sessions as follows:

- Chermside – 11 April 2014
- Caboolture – 9 May 2014
- Raceview – 23 May 2014

SLASS State Conference

The Public Advocate attended the Seniors Legal and Support Service (SLASS) State Conference on 5-6 June 2014 as a panellist for a discussion on the issue of supported decision-making and how this might best interface with the guardianship system in Queensland.

Griffith University NDIS Symposium – Moving from what we know to where we need to be

The Public Advocate attended Griffith University's symposium on 10 June 2014 to present information on possible issues that people may encounter in seeking to take up greater levels of choice and control under the NDIS. In particular, the Public Advocate discussed the types of support that could be provided and some practical strategies that might be used to engage people with disability in decision-making processes while still ensuring sufficient safeguards exist for the person in doing so.

Criminal Justice Symposium – Intellectual disability and the criminal justice system

This forum, which occurred on 19-20 June 2014, was jointly hosted by Endeavour Foundation, the Anti-Discrimination Commission of Queensland, the Office of the Public Advocate (Qld) and a number of academic and other agencies. The Public Advocate provided the opening address for the first day of the forum and also participated in a panel discussion on the second day of the forum.

Conferences, Forums and Events

Attendance at topical conferences and other events is an opportunity for learning, engagement and evidence building.

The following pages summarise the conferences and events that were attended by staff in 2013-14.

Positive Practices Symposium 2013 – Positive Behaviour Support: Journey or Destination? (Centre of Excellence)
University of Queensland, Ipswich
10-11 July 2013

Synapse Networking Breakfast (Synapse)
Synapse Head Office, West End
23 July 2013

CRUCial Conversations – Human Rights for Women with Disability: Personal and Political Reflections on an International Movement (Community Resource Unit)
CRU Head Office, South Brisbane
21 August 2013

Human Rights versus Restrictive Practices Forum (Queensland Advocacy Incorporated and Anti-Discrimination Commission of Queensland)
Anti-Discrimination Commission of Queensland, Brisbane
30 August 2013

QCOSS State Conference (Queensland Council of Social Service)
Brisbane Convention and Exhibition Centre, Brisbane
12-13 September 2013

25 Years of CRU Anniversary Celebration (Community Resource Unit)
Brisbane Convention and Exhibition Centre, South Brisbane
13 September 2013

Achieve Ability Launch (Disability Employment Services)
Matchworks, Parkinson
3 October 2013

ACSO 7th Forensic Disability Conference – Striking the Balance: Justice, Rights and Community Safety (Australian Community Support Organisation)
Melbourne Cricket Ground, Melbourne
7-9 October 2013

DANA 5th National Disability Advocacy Conference – Independent Advocacy: Safeguarding Choice, Control & Well-being (Disability Advocacy Network Australia)
Brisbane Convention and Exhibition Centre, Brisbane
31 October 2013

NDS Zero Tolerance Public Consultation: Preventing and Responding to Abuse and Neglect of People with Disability in Non-Government Services (National Disability Service)
Royal International Convention Centre, Brisbane
1 November 2014

Governor's Afternoon Tea to celebrate Spinal Injuries Awareness Week (Her Excellency The Governor of Queensland)
Government House, Paddington
14 November 2013

Joint Solutions Roundtable on Cross Sector Service Pathways (Young People in Nursing Homes National Alliance)
Parliament House, Brisbane
3 December 2013

CJRC Social, Criminal & Indigenous Justice Research Theme Launch (Crime and Justice Research Centre)
Queensland University of Technology, Brisbane
5 December 2013

WWILD-SVPA & CLA Paperbag Lunch Forum – Relationships and Sexual Education for People with Intellectual Disability: Current Approaches and Issues in Queensland (WWILD-SVP Association Inc. & Community Living Association Inc.)
Trinity Place, Woolloongabba
7 February 2014

Cooperative Research Centre for Cognitive Disability Workshop
Griffith University, South Brisbane
10 February 2014

QMHC Legislation Forum (Queensland Mental Health Commission)
Sofitel Hotel, Brisbane
19 February 2014

YPINH Joint Solutions Action Plan Forum (Young People in Nursing Homes National Alliance)
Parliament House, Brisbane
28 February 2014

Human Rights and Mental Health: Conflicts and Controversies – Dr Neeraj Gill
Queensland Mental Health Commission, Brisbane
5 March 2014

Growing Hope – Perinatal Depression Awareness Luncheon (Post and Anti Natal Depression Association Inc. and Peach Tree Perinatal Wellness)
The Gabba, Woolloongabba
7 March 2014

QAI Capacity Roundtable discussion on the draft Handbook for Practitioners on Legal Capacity (Queensland Advocacy Incorporated & Allens)
Allens, Brisbane
20 March 2014

Queensland Disability Conference

Brisbane Convention and Exhibition Centre, South Brisbane
24-25 March 2014

Current Research in Forensic Disability (Australasian Society for Intellectual Disability)

Trinity Place, Woolloongabba
25 March 2014

NDS, QCIDD and ML Innovation Hub Launch Event – Health Resources for Support Workers and GPs (National Disability Services, Queensland Centre for Intellectual and Developmental Disability and Medicare Local)

NDS Innovation Hub, Lutwyche
31 March 2014

Australian Supported Decision-Making Network meeting

Office of the Public Advocate, Sydney
7 April 2014

NDS Inaugural State Roundtable on the Mental Health of People with Intellectual Disability (National Disability Services)

Bronco's Leagues Club, Red Hill
28 April 2014

Mental Health Law Reform and Human Rights – Dr Ian Freckelton Lecture

Queensland University of Technology, Brisbane
5 May 2014

Challenging the Queensland Criminal Code: Sexual expression for people with an impairment of the mind (Queensland Centre for Intellectual and Developmental Disability)

Powerhouse, New Farm
22 May 2014

2014 Roundtable on Issues for People with Intellectual Disability – Getting ready for the NDIS (WWILD-SVP Association Inc., Community Living Association Inc. and Endeavour Foundation)

Albert Street, Brisbane
4 June 2014

QCOSS State Budget Breakfast (Queensland Council of Social Service Inc)

Brisbane Convention and Exhibition Centre, South Brisbane
5 June 2014

Seniors Legal and Support Service State Conference (Seniors Legal and Support Service)

Queensland Law Society Building, Brisbane
5-6 June 2014

Griffith University NDIS Symposium – Moving from what we know to where we need to be (Griffith University)

Griffith University Logan Campus
10 June 2014

Barriers to Cross Sector Implementation of the NDIS (University of Sydney)

Darlington Centre, Sydney
11 June 2014

Brisbane Royal Commission Information Session (Royal Commission into Institutional Responses to Child Sexual Abuse & Queenslanders with Disability Network)

Brisbane Convention and Exhibition Centre, South Brisbane
12 June 2014

ASID Issues and Barriers in Research with People with Intellectual Disability (Australasian Society for Intellectual Disability)

WWILD-SVP Association Meeting Room, Woolloowin
17 June 2014

Criminal Justice Symposium (Endeavour Foundation, Anti-Discrimination Commission of Queensland and Office of the Public Advocate)

Anti-Discrimination Commission of Queensland, Brisbane
19-20 June 2014

Communication strategy

The Office of the Public Advocate's communication strategy aims to ensure that the work undertaken by the Office is understood within the context of the functions of the Public Advocate, with a focus on clearly articulated outcomes.

Increasingly the Office has sought to simplify the language used in its publications and to generate reports that take readers 'on a journey' thereby enabling them to better understand and engage with the issue at hand.

The Office's communication strategy also seeks to promote increased understanding of the Public Advocate's role, and encourages recognition for the contribution that the Public Advocate can make to exploring and addressing issues that are relevant to people with impaired decision-making capacity. In doing so, it is hoped to:

1. encourage government agencies to engage with our Office as a key partner in the policy formation process in all areas of public policy that impact on people with impaired decision-making capacity; and
2. encourage government agencies to access and incorporate our research findings and expertise in their work.

Key Result Area 3 – Advocacy and Inclusion

Promote and protect rights, interests and well-being

Promote inclusive policy, programs and practice to improve social and economic participation

Ensure government reform, policy and legislation considers and addresses rights and interests

The Office of the Public Advocate's advocacy and inclusion focus is shaped by a number of factors, enabling the Office to be both proactive and responsive. Our analysis of issues is informed by available evidence, as much as it contributes to the development of an ever-evolving evidence base. The factors that shape the Office's agenda include:

- priorities set through our business planning;
- ongoing critique of the evidence base;
- emerging reforms, including policy and legislative reviews, that are relevant to our potential population; and
- contemporaneous issues raised with the Office through a variety of channels, including stakeholder forums and directly from enquirers who may be persons with impaired decision-making capacity, family members or other people in their support networks.

In 2013-14, the Office was involved in a broad range of systems advocacy matters relating to the rights, interests and well-being of people with impaired decision-making capacity. A number of consultations and submissions were also made on topical issues.

The Office also participated in a range of key meetings on priority matters. The following selection provides an example of the breadth of issues canvassed over the course of the year.

Submissions

During 2013-14, the Public Advocate made a number of submissions to various policy and law reform agendas and inquiries. Outlines of the Public Advocate's submissions are listed below and, in most cases, are also available on the Public Advocate website (www.publicadvocate.qld.gov.au).

August 2013 – Submission to the Australian Human Rights Commission's Investigation into Access to the Criminal Justice System for People with Disability

In April 2013, the Australian Human Rights Commission released an Issues Paper outlining key barriers to justice for people with disability and sought submissions, including responses from people with disability who had experience of the criminal justice system.

The underlying basis of the Public Advocate's submission was that, as a signatory to the *Convention on the Rights of Persons with Disabilities*, Australia must provide reasonable accommodation for people with impaired capacity to ensure equal recognition before the law.

While the criminal justice system has taken steps toward accommodating people with disability (with some current initiatives in Queensland outlined in the Public Advocate's submission), it was argued that further initiatives were needed to address the issues of over-representation and lack of responsiveness to people with disability in the criminal justice system.

The Public Advocate's submission explored each stage of the criminal justice process from initial contact with the police, to the court process, and finally post-sentencing and corrective services to detail ways in which the system could better accommodate people with disability.

For example, it was argued that police should have access to additional training in identifying, interacting with and interviewing people with disability. With regard to the court process, it was argued that increased use of 'special witness' provisions, training for legal personnel in interacting with people with disability, and the use of communication aids or interpreters would assist in a more responsive and inclusive process for people with disability.

Further, the need for enhanced systematic screening for and identification of people with disability or impairment in correctional environments was emphasised to ensure that this cohort can participate in appropriate rehabilitative and educational programs. Finally, supports must be put into place for people with disability when they are released from prison to support their transition from prison and their integration back into the community.

The important role of complementary human service systems, such as disability services, housing, education and health, was also emphasised.

August 2013 – Submission to the terms of reference for the review of the *Mental Health Act 2000*

In June 2013, the Department of Health sought submissions to inform the terms of reference for the review of the *Mental Health Act 2000*.

The Public Advocate's submission was divided into two parts. Part A identified issues of general application to the *Mental Health Act 2000*. A number of the areas for focus were those provisions in the Act that were identified as negatively impacting on a person's rights in a discriminatory or overly restrictive manner. These included for example the indefinite nature of forensic orders; the compulsory involvement in treatment programs; and the indiscriminate use of involuntary treatment. Finally this part focused on the potential for further infringement of rights once a person is made subject to an order, represented by relatively new provisions proposing to allow the Director of Mental Health to impose monitoring (including GPS monitoring) on certain patients and the ability to cancel a 'class' of patients' limited community treatment.

Part B of the Public Advocate's submission focused on issues specific to people with intellectual disability and cognitive impairment. This part focused on the current gaps in and fragmentation across the current scheme for involuntary treatment of people with intellectual disability. This fragmentation, it was argued, creates confusion, leaves gaps and often results in less than optimal responses to people with intellectual disability who come into contact with the criminal justice system.

August 2013 – Submission in response to the Discussion Paper for the Review of the Regulation of Restrictive Practices

In July 2013, the Department of Communities, Child Safety and Disability Services released a Discussion Paper for the Review of the Regulation of Restrictive Practices in the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*.

Feedback was sought on Queensland's restrictive practices framework with a view to both streamlining processes and reducing red tape for service providers while maintaining safeguarding adults with challenging behaviours causing, or at risk of causing, physical harm.

While the Public Advocate's submission provided feedback on targeted questions with respect to the legislation in the Discussion Paper, the importance of also focusing on the broader practice and system initiatives aimed at building the capacity of the sector to implement positive behaviour support approaches to reduce and eliminate the need to use restrictive practices was emphasised.

Overall the Public Advocate was supportive of the legislation as it then stood but emphasised that any changes should:

- clarify definitions of restrictive practices to make it clear that they are used for the purpose of controlling behaviour that may cause harm to the adult or others;
- take a cautious approach to any blanket removal of the regulation of restricting access to objects;
- maintain the independence of decision-makers;
- consider aligning the decision-making regime for general services and community access and respite services;
- provide flexibility so that people can transition between service providers while maintaining safeguards (such as the importance of the review of a positive behaviour support plan when a person receives services from a new service provider in a new environment);
- maintain the current review periods for containment and seclusion (12 months) but consider providing QCAT with the flexibility to appoint a guardian for restrictive practice matters for up to two years; and
- ensure any changes to the legislative requirements for a positive behaviour support plan should be accompanied by a range of strategies including clinical guidance and oversight to ensure that plans achieve their objectives of reducing the need to use restrictive practices and improving the adult's quality of life.

The Public Advocate also sought the explicit exclusion of the use of anti-libidinal medication from the restrictive practices regulatory regime. Given the complex legal, ethical, clinical and medical efficacy issues associated with its use, the Public Advocate agreed with the suggestion by the Queensland Law Reform Commission that anti-libidinal medication should only be administered to people with impaired decision-making capacity as a type of special health care under the *Guardianship and Administration Act 2000*, and thus only able to be consented to by QCAT on the basis of expert clinical advice.

November 2013 – Submission to the Australian Law Reform Commission for the Inquiry into Serious Invasions of Privacy in the Digital Era

In October 2013, the Australian Law Reform Commission (ALRC) released an Issues Paper highlighting issues relevant to the inquiry into serious invasions of privacy in the digital era including innovative ways in which the law may reduce serious invasions of privacy; the necessity of balancing the value of privacy with other fundamental values including freedom of expression and open justice; and the detailed legal design of a statutory cause of action for serious invasions of privacy.

The ALRC was encouraged to consider the vulnerability of adults with impaired decision-making capacity, both in terms of the higher level of risk that breaches of privacy may occur as well as the potential for the nature of a person's impairment to diminish their capacity to make and pursue remedies to actual breaches.

Consideration for specific provisions for obtaining informed consent from adults with impaired decision-making capacity within a supported decision-making framework was also recommended to the ALRC. Such provisions would take account of factors that may need to be addressed when the adult's expressed views conflict with what others might consider to be in their best interests.

The Public Advocate's submission also discussed the results of the Office's inquiry into the use of electronic monitoring in disability accommodation services in Queensland, pointing out the potential vulnerability of adults with impaired decision-making capacity to invasions of their privacy and the current lack of safeguards.

December 2013 – Submission to the Australian Human Rights Commission regarding the Investigation into Equality, Capacity and Disability in Commonwealth Laws

In November 2013, the Australian Law Reform Commission (ALRC) released an Issues Paper for its inquiry into Commonwealth laws and legal frameworks that deny or diminish the equal recognition of people with disability as persons before the law and their ability to exercise legal capacity.

The Public Advocate's submission focussed upon the need for reasonable accommodation for people with disability, an obligation under the *Convention on the Rights of Persons with Disabilities*. In particular the Public Advocate suggested the incorporation of this positive obligation into the three 'planks' of the Commonwealth's legal and policy framework for people with disability - the *Disability Discrimination Act 1992* (Cth); the *National Disability Insurance Scheme Act 2013* (Cth); and the National Disability Strategy.

These legal and policy frameworks for people with disability, it was argued, must incorporate the notion of 'reasonable accommodation' underpinning the Convention, including the related obligation of ensuring support is provided so that people with disability can exercise their legal capacity and are proactively empowered to exercise their rights.

The Public Advocate argued that there should be a much greater emphasis in policy and legislation on ensuring that people with disability are given the support, assistance and information they need to exercise their legal capacity and make their own decisions, with substitute decision-making such as guardianship as a last resort.

This premise underpinned the Public Advocate's approach to the issues about the National Disability Insurance Scheme, legal capacity and decision-making support that were highlighted in the ALRC's Issues Paper.

The submission also focused on the current inequities in the provision of health, aged care and disability services, including the use of restrictive practices as well as the current over-representation of people with disability in the criminal justice system and the lack of reasonable accommodation for people with disability.

Finally, this submission addressed the issue of privacy. In particular, drawing on the Office's research into electronic monitoring in disability accommodation services in Queensland, it was noted that many adults with disability or impaired capacity who reside in supported accommodation are subjected to invasions of their privacy, often without appropriate safeguards.

December 2013 – Submission to the Health and Community Services Committee in response to the Disability Services (Restrictive Practices and Other Legislation) Amendment Bill 2013

In November 2013, the Health and Community Services Committee sought submissions on the Disability Services (Restrictive Practices and Other Legislation) Amendment Bill 2013 that was introduced into the Queensland Parliament on 20 November 2013. The Bill sought to make amendments to the regulatory framework for restrictive practices in the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*.

In this submission the Public Advocate specifically sought to highlight the context for the use of restrictive practices in the disability services sector. The Public Advocate sought to illustrate that the use of such practices is often in response to a failure of the service system to appropriately respond to the support needs of people with disability, rather than in response to 'challenging' behaviours inherent in many people with intellectual and cognitive disabilities. From this point of view, it was argued, it is imperative to maintain safeguards while working hard to improve the disability sector's capacity to engage in positive behaviour support and provide appropriate support and clinical care.

Therefore the Public Advocate was critical of any proposed reforms that sought to reduce safeguards for people with disability subject to restrictive practices. This included the proposal to allow service providers to use restrictive practices without consent with immunity for up to 30 days where there has been a delay in the Public Guardian providing a short-term approval or consent for restrictive practices (where the existing consent has expired).

However, the Public Advocate also welcomed the new provisions requiring support services that utilise restrictive practices to report on the use of such practices, emphasising the importance of reporting in demonstrating the effectiveness or otherwise of such strategies (including the legislative scheme) in reducing the need to use restrictive practices.

Overall, while the Public Advocate supported some aspects of the Bill, it was felt that many aspects of the Bill were weighted towards addressing resourcing issues for service providers and decision-makers rather than enhancing safeguards for adults subject to restrictive practices.

February 2014 – Submission to the Health and Community Services Committee in response to the Communities Legislation (Funding Red-Tape Reduction) Amendment Bill 2014

The Committee sought submissions in response to the Communities Legislation (Funding Red-Tape Reduction) Amendment Bill 2014 (the Bill) that was introduced into the Queensland Parliament on 11 February 2014. The stated objective of the Bill was to safeguard funding for the provision of services and products to the community, to simplify regulation, reduce red tape costs and have more consistent funding arrangements across social services agencies.

The Public Advocate was particularly concerned that this Bill removed some important safeguards with respect to people with disability in receipt of funded services.

These safeguards were originally introduced in 2006 with the commencement of the then new *Disability Services Act 2006*. They came about as part of a commitment by the government to strengthen safeguards following the uncovering of serious allegations of abuse and neglect against people with disability at a funded service and a subsequent review of the *Disability Services Act 1992*. For example the Bill removed:

- the legislative framework for the Disability Sector Quality System including the pre-approval process and the disability specific service standards; and
- the prescribed requirements that amongst other things required funded services to keep and implement a policy about preventing and responding to abuse, neglect and exploitation.

The Public Advocate was particularly concerned about the removal of section 134 *Disability Services Act 2006* that allowed an authorised officer to enter a place where disability services are being provided (without a warrant) by using necessary and reasonable help and force, if the authorised officer reasonably suspects that there is an immediate risk of harm to a person with disability at the

place because of abuse, neglect or exploitation. This was an important safeguarding mechanism given that it is well known and understood that the abuse of vulnerable people, including many people with disability, is difficult to uncover. People with disability themselves may find it difficult to complain, or not know that they have a right to. It may be difficult to gather the evidence needed to support the application for a warrant or an immediate police response.

April 2014 – Submission to the Health and Community Services Committee in response to the Public Guardian Bill 2014

The Committee invited submissions in relation to the Public Guardian Bill 2014 which sought to establish the statutory position of the Public Guardian and transfer both the refocused child guardian functions and the adult guardian functions to the new position of the Public Guardian.

This Bill was considered along with the Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014, which jointly sought to implement the Queensland government endorsed recommendations from the Queensland Child Protection Commission of Inquiry.

The Public Advocate's submission highlighted concerns regarding the extent to which a single statutory position could effectively balance and manage the demands associated with upholding the responsibilities accorded to the Public Guardian role. In particular, it was identified that:

- adults with impaired capacity and 'at-risk' children are two very vulnerable groups, and there is a need to ensure that responsiveness for one group is not compromised by the demands of the other; and
- there is a need to balance the work required by individual matters with the educative and advisory functions that provide the necessary vehicle by which to ensure understanding of the systems within which the role operates, and promote change.

The Public Advocate noted that there is a clear need for greater education, support, training and communication initiatives with respect to decision-making for adults with impaired decision-making capacity.

The Public Advocate also expressed concern that with the combined focus of the Public Guardian on children and adults, the proactive educative and advisory functions of the Public Guardian may not be accorded the necessary priority or resourcing.

May 2014 – Response the Queensland Mental Health Commission Consultation Paper – Directions for Mental Health and Drug Reform in Queensland

In May 2014, the Queensland Mental Health Commission (QMHC) sought feedback from selected stakeholders on the development of a whole-of-government strategic plan to improve the supports, services and systems with which people with mental illness or problematic substance use interact.

The Public Advocate supported the development of the strategic plan, and particularly supported the plan being pursued within a recovery-oriented frame of reference.

It was suggested that the plan should include the development of a positive research agenda and a robust evidence-base, with the intent that this research be used strategically to address issues experienced by people with mental illness or problematic substance use in accessing, navigating and achieving outcomes from the system.

The Public Advocate supported the vision articulated by the strategic plan, and particularly approved of the vision's reflection of the multiple layers that underpin a person's experience of community. It was suggested that the need to make 'reasonable accommodation', which was implicit in some areas, should be stated explicitly and in a way that would promote action.

The Public Advocate also supported the principles that were articulated in the strategic plan, while suggesting that they could be re-ordered so as to establish 'person-centredness' as the primary principle, followed by the importance of an integrated system that works through natural supports, community supports and then system supports as well as a greater focus on maximising autonomy.

The Public Advocate generally supported the pillars for reform. In particular, the Public Advocate supported the focus on responsive and integrated services and suggested that there would be value in reflecting the expectation that the system should be driven by the needs of individuals and should develop, strengthen and maintain natural networks even where formal supports are likely to be the only means of meeting a particular need.

Finally, the Public Advocate proposed that engagement strategies should also include building the capacity of individuals, family members and carers to plan for and participate in treatment.

June 2014 – Submission to the Australian Law Reform Commission in response to the Discussion Paper Equality, Capacity and Disability in Commonwealth Laws

In May 2014, the ALRC sought feedback on various proposals to address issues of equality for people with disability in Commonwealth Laws. The Discussion Paper was particularly focused on proposed national decision-making principles and a Commonwealth decision-making framework, which also formed the focus of the Public Advocate's submission.

The Public Advocate agreed that the rights-based approach proposed by the Discussion Paper has great potential for people with disability and is consistent with the paradigm shift in the United Nations *Convention on the Rights of Persons with Disabilities*. It was also recognised that there were many potential benefits associated with the Commonwealth decision-making regime proposed in the Discussion Paper such as formal recognition of supporters with third-party agencies (which should reduce the need for appointment of substitute decision-makers); an enhanced focus on supporting a person to make their own decisions (rather than others making decisions on their behalf); and encouragement of the close involvement of friends, family and supporters in a person's life (which can be a significant safeguard).

The Public Advocate was concerned however that many aspects of the proposed Commonwealth decision-making framework may duplicate the current state-based decision-making regimes and potentially create conflict with existing state-based schemes. Given that the Commonwealth only legislates in some areas of social services that people with disability might require, many people will still approach tribunals for guardianship and administration orders; prepare and execute enduring documents; make advance directives; and receive informal support for decision-making.

Further the Public Advocate emphasised that high order principles such as 'acting in a way to promote and safeguard the person's rights' (proposed by the ALRC as an alternative to 'best interests') can be just as vulnerable to implementation in an unprincipled way and with a lack of transparency by decision-makers. The importance of education, training, communication, advocacy and monitoring was emphasised.

Finally, the Public Advocate's submission also highlighted the importance of safeguards and the important role played by existing state-based guardianship systems (including public guardians and tribunals) in the provision of safeguards.

Consultations

To complement the Office's submissions, the Public Advocate also had the opportunity to contribute to the following inquiries through 'in-person' discussions and the provision of verbal 'evidence':

- Australian Senate's Standing Committee on Community Affairs – Inquiry into the care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia
- Queensland Government's Health and Community Services Committee – Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.

Further to these inquiries, the Public Advocate also participated in the following consultative discussions:

- Queensland Mental Health Commission Strategic Plan – Government Agency forum
- Australian Law Reform Commission – Review of equal recognition before the law and legal capacity for people with disability

In addition to the significant number of meetings that the Public Advocate has participated in to influence legislation reform, policy direction and practice improvement, the Public Advocate has also been specifically consulted on the following matter.

Proposal for Addressing the Debts of People with Impaired Decision-Making Capacity

The Public Advocate has had ongoing concerns in relation to debtors with impaired capacity; that is, adults with impaired capacity who have incurred a State Penalties Enforcement Agency (SPER) debt. In 2013-2014 the Office of the Public Advocate engaged with SPER to advocate for the creation of ministerial guidelines that would enable SPER to waive the debts of a person with impaired decision-making capacity.

The Office made a submission to SPER that supported the development of a range of options for debtors with impaired decision-making capacity. These options included the waiving of debts and the use of fine option orders in lieu of, or to support, the payment of fines.

SPER is currently undergoing a review and this review will in part consider options for addressing the debts of 'disadvantaged debtors'. The Office of the Public Advocate has agreed to engage with SPER and offer assistance insofar as the review relates to debtors with impaired decision-making capacity. This engagement is expected to occur in 2014-2015.

The Office will continue to work with SPER to ensure that adults with impaired capacity who incur SPER fines are adequately protected and to advocate for the waiver of debts for those adults in appropriate circumstances.

Meetings and membership

The Public Advocate participates in a range of significant stakeholder meetings. In doing so, we seek to ensure that the needs and perspectives of people with impaired decision-making capacity are considered and addressed appropriately.

Australian Guardianship and Administration Council (AGAC)

AGAC is the national forum of:

- Public Advocates;
- Public and Adult Guardians;
- Boards and Tribunals; and
- Public and State Trustees or their equivalents throughout Australia.

This is the only national forum and meetings are held biannually over two days. Each jurisdiction shares the hosting functions.

The Queensland officials who are members of AGAC are the Public Guardian, the Public Trustee, the Senior Member of the Queensland Civil and Administrative Tribunal, and the Public Advocate.

AGAC provides the opportunity for members to discuss matters of mutual concern and/or national significance, and to formulate an Australia-wide approach to issues of Guardianship and associated systems.

Elder Abuse Prevention Unit (EAPU) – Reference Group

These meetings are held quarterly and are attended by a broad range of stakeholder representatives including the Office of the Public Guardian, the Public Trust Office, the Australian Pensioners and Superannuants League, the Department of Communities, Child Safety and Disability Services, the Office of the Public Advocate, tertiary institutions and non-government organisations.

The EAPU chairs these meetings with each agenda focussed on a specific discussion topic while also offering an opportunity to raise emerging issues and identify action that may be required.

Elder Abuse Prevention Unit (EAPU) – Research Sub-Group

This sub-group of the EAPU was formed to discuss and develop a list of specific criteria that could be provided to a prospective researcher with a view to pursuing some form of prevalence study. Staff from the Office attended these meetings while they were being run to provide input and inform decision-making in respect of outcomes.

National Disability Services (NDS) – Zero Tolerance Project Reference Group

In 2013-14, National Disability Services initiated a national project with the aim of providing a practical framework for disability service providers based on prevention, early intervention and remediation of cases of abuse and neglect of people with disability.

The Project Reference Group supports this work by providing disability sector knowledge and expertise with respect to preventing and responding to abuse and neglect experienced by people with a range of different disability support needs across all Australian jurisdictions.

Meetings have been held monthly and have been complemented by a number of one-day workshops hosted by each of the jurisdictions involved in the project.

Restrictive Practices Regulation Reduction Working Group

The purpose of this working group was to explore and promote ways of achieving outcomes for adults with disability subject to restrictive practices that would still ensure sufficient safeguards for adults even while reducing the regulatory burden for service providers.

The Public Advocate's focus in the course of these discussions centred around the need for a cohesive review and reform process that considered all dimensions of reform including legislation, policy, practice, training and communication strategies.

Enquiries – information and referral

Enquiries made to our Office are an important source of information for identifying potential systems issues. This conduit of information is integral to maintaining a current understanding of the range of issues that may be impacting the lives of people with impaired decision-making capacity, their families, and carers.

Given the Office's limited staffing establishment, we must balance the enquiries received and the expectations people may have in relation to our role. The Office of the Public Advocate works to influence policy, programs and services at a systems level. It does not have a direct role in individual advocacy, is not a complaints agency, and is not authorised to impart legal advice.

All enquiries received by the Office are noted to assist and inform the identification of systems issues. Of those enquiries that are within the scope of the Public Advocate's functions, a minority represent potential systems advocacy issues for people with impaired decision-making capacity. However, given the limited resourcing of the Office and the number of issues that are raised with the Office, not all of these potential systems advocacy issues can be addressed.

Many issues raised with the Office fall outside the scope of the Office's functions. The range and number of enquiries that fell outside of the scope of our work highlight the complexity of the systems serving people with impaired decision-making capacity, their families and carers.

As our Office is not authorised to be involved in individual advocacy matters, it is common to refer enquiries to other agencies for direct assistance. Guardianship agencies such as the Office of the Adult Guardian, the Queensland Civil and Administrative Tribunal and the Public Trustee continue to be the main referral points for the Office.

Key Result Area 4 – Business Processes

Operate transparently and with accountability

Ensure effective business and risk processes

Transparent and accountable business processes are important for sound corporate governance.

As a small entity, our Office operates mainly within the broader strategic and business planning processes implemented by the Department of Justice and Attorney-General.

It is important, however, to ensure that our resources are primarily invested in our systems advocacy work.

Internal protocol for attending Queensland Civil and Administrative Tribunal hearings

The Public Advocate is entitled under the *Guardianship and Administration Act 2000* to attend tribunal hearings as an interested party. This provides an opportunity to gauge current issues, observe systems and processes in action, and enhance understanding of guardianship and administration matters.

Office of the Public Advocate staff have continued to attend numerous hearings in 2013-14, many of these attendances being related to projects being undertaken by the Office.

Internal protocol for reviewing limitation orders made by the Queensland Civil and Administrative Tribunal

The *Guardianship and Administration Act 2000* entitles the Public Advocate to be notified of limitation orders made by QCAT. Limitation orders include adult evidence orders, closure orders, non-publication orders and confidentiality orders.

When a limitation order is made the Public Advocate must be provided with a copy of the decision, the information before the Tribunal in its consideration of making the limitation order, and any written reasons accompanying the decision.

In 2013-14, the Office developed a procedure to document and analyse the limitation orders received from QCAT. This primarily involves an analysis of the relevant procedural requirements and the considerations relevant to the making of an order.

This analysis provides an opportunity to enhance the Office's understanding of limitation orders and ensures that the Office maintains current knowledge regarding the use of limitation orders; observes QCAT systems and processes in action; and monitors these orders for any systemic issues that may exist or arise.

The Office of the Public Advocate staff has systematically reviewed limitation orders throughout 2013-14, and will continue to undertake this task.

Business planning

The Public Advocate convened a number of business planning days and other strategic planning discussions with staff in 2013-14.

These activities assisted in defining and prioritising our work program for the next twelve months. They have also provided the opportunity to discuss priority issues and how our office might advance them.

Office of the Public Advocate – Operations

Organisational structure

The Public Advocate is an independent statutory position appointed by Governor in Council in accordance with the *Guardianship and Administration Act 2000*.

In April 2012, the incoming government acted on its election commitment to 'retain an independent Public Advocate as a statutory authority'. This development provided authority for the Public Advocate position to be filled on a permanent basis.

Ms Jodie Cook is currently appointed as Public Advocate for a three year term, commencing 13 August 2012 through until 12 August 2015.

The Act also permits an acting Public Advocate to be appointed when the office is vacant or the Public Advocate is absent from duty or unable to perform the duties of the role.

This provision was called upon to enable Ms Cook to take six weeks leave in June/July 2014. Ms Kim Chandler was the acting Public Advocate for this period.

The *Guardianship and Administration Act 2000* also provides that staff may be appointed to assist the Public Advocate to perform the functions under the legislation. It is a requirement that staff be appointed under the *Public Service Act 2008*.

The staffing establishment for the Office provides for six officers to support the Public Advocate in performing the statutory functions for which the position has responsibility.

It is important to note that not all positions were filled across the full financial year and some vacancies were carried.

In the 2013-14 financial year, the Office has continued its focus on maintaining its establishment as fully as possible.

For the majority of 2013-14, the Office hosted five staff in permanent positions, with the remaining position temporarily filled at 30 June 2013.

In keeping with a commitment to work-life balance, some officers are engaged on a part-time basis.

Permanent positions:

1 x AO8 Executive Manager (Advocacy, Policy and Evidence)

1 x AO7 Principal Research Officer

2 x AO6 Senior Research Officers

1 x PO4 Senior Legal Officer

1 x AO3 Administration Officer

Financial summary

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

Funding for the office is appropriated from the Queensland Government as part of the appropriation for the Department of Justice and Attorney-General.

The Director-General of the Department of Justice and Attorney-General is the accountable officer pursuant to the *Financial Accountability Act 2009*.

Comprehensive financial details relating to the operations of the department are reported in the annual report for the Department of Justice and Attorney-General.

A summary of the expenditure for the Office of the Public Advocate for the financial year 2013-14 is provided below:

Table 2 Office of the Public Advocate Financial Summary 2013-14

Expenditure items	
Employee related expenses*	\$705,000
Supplies and Services	\$90,000
Grants	nil
Depreciation**	\$1,000
Total	\$796,000

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

** The Office of the Public Advocate did not incur any amortisation and deferred maintenance expenditure.

Note: expenditure figures have been rounded to nearest 100.

Travel expenditure

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

Interstate travel is sometimes undertaken for significant stakeholder forums. In particular, interstate travel is factored into the budget to attend the bi-annual Australian Guardianship and Administration Council (AGAC) meetings. This is the only national forum for state and territory agencies to promote the interests of people with impaired decision-making capacity. All key leaders in the guardianship jurisdictions across Australia, including Public Trustees and heads of tribunals, are members of this forum.

The Public Advocate attended the following interstate forums in 2013-14:

- Australian Guardianship and Administration Council (AGAC) meeting in Darwin on 5-6 September 2013;
- ACSO 7th Forensic Disability Conference – *Striking the Balance: Justice, Rights and Community Safety* (Australian Community Support Organisation) in Melbourne on 7-9 October 2013;
- Australian Guardianship and Administration Council (AGAC) meeting in Perth on 27-28 March 2013; and
- Barriers to Cross Sector Implementation of the NDIS (University of Sydney) in Sydney on 11 June 2014.

Further to the above, the Principal Research Officer from the Office of the Public Advocate attended the National Supported Decision-Making Network Meeting in Sydney on 7 April 2014.

The total expenditure incurred by the Office for interstate travel in 2013-14 was \$8,395.

Grants expenditure

In 2013-14, there was no grant expenditure incurred.

Staff Development

The development of staff is an important way to ensure that the Office achieves outcomes. Over the year, staff attended a range of learning and development opportunities focussed on skills such as:

- communicating with impact;
- strategic thinking and influence;
- legal practice and research strategies;
- information technology and software application;
- online communication; and
- management and leadership.

Work-life balance

The Office of the Public Advocate supports each staff member to achieve a mutually convenient work-life balance. The importance of maintaining an optimum balance in relation to work and other facets of personal lives is acknowledged.

The Office follows the Department of Justice and Attorney-General part-time employment policy and procedures. Some members of staff are engaged under formalised part-time working arrangements.

Notes:

Office of the Public Advocate

Website www.publicadvocate.qld.gov.au

Email public.advocate@justice.qld.gov.au

Write to Office of the Public Advocate
GPO Box 149
BRISBANE QLD 4001

Telephone (07) 3224 7424

Fax (07) 3224 7364



Queensland Government