



Annual Report

2021-22

Acknowledgement of Country

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

Acknowledgement of Lived Experience

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

Public availability

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

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Feedback on this report

Feedback on this report is welcomed. A feedback survey is available at <https://www.getinvolved.qld.gov.au/gi/consultation/10150/view.html>. Alternatively, a hard copy of the survey may be requested from our office.

Disclaimer

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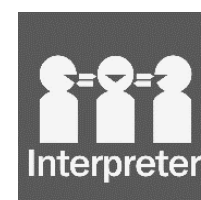


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Interpreter service

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



The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice,
Minister for Women and Minister for the
Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

26 October 2022

Dear Attorney-General,

I am pleased to present the Public Advocate's Annual Report for the financial year that ended on 30 June 2022.

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

The Annual Report provides information on the key activities of the Public Advocate and staff of the office for 2021-22 and a statement of the office's financial and operational functions for the year.

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

Yours sincerely,

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

John Chesterman
Public Advocate



Message from the Public Advocate

I began my role as Queensland Public Advocate in August 2021. The focus of much of the office's work since that time has been on five significant systemic reform areas that I will briefly discuss here, and that are more fully described in the pages that follow.

This year, the office finalised a report on section 216 of the Queensland *Criminal Code 1899*, which criminalises sexual behaviour involving a person with 'an impairment of the mind'. The report called for the ongoing need for this provision to be reviewed.

A significant amount of advocacy has also been undertaken by the office on the need for improved regulation of restrictive practices. This has included the release of a reform options paper in October 2021 concerning Queensland's regulation of restrictive practices, and national advocacy on the need for improved aged care restrictive practices regulation.

Queensland's provision of acute mental health care was also the subject of a major project this year, which the office undertook in collaboration with psychiatrist Professor Neeraj Gill. That work has resulted in the identification of a range of reform imperatives, from improving the training and capacity of first responders to assist people in mental health crisis, to drawing on co-design principles to improve the experience of people in authorised mental health services.

The office also examined the topic of confidentiality in the adult guardianship system and conducted an in-depth analysis of the various 'limitation orders' that the Queensland Civil and Administrative Tribunal (QCAT) has made over a five-year period. One outcome from that project has been a call to remove the guardianship system's default prohibition on the naming of people who are the subject of guardianship proceedings.

A major ongoing project, meanwhile, is examining the adult safeguarding system in Queensland, considering how key elder abuse reform recommendations made in 2017 by the Australian Law Reform Commission and referenced in the current *National Plan to Respond to the Abuse of Older Australians [Elder Abuse]*, might best be implemented in Queensland. The work on this project has involved extensive consultation throughout Queensland, with eight in-person roundtables held in Townsville, Mt Isa, Toowoomba, Rockhampton, Southport, Caloundra, and Brisbane (where we held two). We also held a number of online and in-person consultations with people with lived experience of disability, including two sessions organised with Dementia Australia, and two with the Queenslanders with Disability Network. The first volume (Identifying the Gaps) of the two-volume report has now been completed, with the second volume (Reform Recommendations) expected during 2022-23.

Other important contributions from the office this year have included written and oral submissions to parliamentary committees, speeches in a range of forums, and the co-publication, with the Queensland Law Society, of a report on elder abuse.

You can read about each of these projects, and other work undertaken by the office, in this report. Of course, none of this considerable body of systemic reform work would be possible if I did not have a terrific team of committed and energised staff members. I thank each of them; Tracey, Yuu, Megan, Sandra, and Jacinta (our 2021-22 team). I have also benefitted enormously this past year from the collegial support of numerous people and agencies in the government and non-government sectors. I cannot thank all of these individuals enough. Each of them brings their own insights and skills to bear on the work they do; and collectively they ensure that we are all focussed on improving the extent to which adults with impaired decision-making ability are able to live meaningful lives of their own choosing.



John Chesterman
Public Advocate



Table of contents

Message from the Public Advocate	iii
Table of contents	iv
About the Public Advocate	1
The Public Advocate	2
Legislative functions	2
Office of the Public Advocate	3
Operating environment	3
COVID-19	3
Human rights	4
Royal Commissions.....	4
The National Disability Insurance Scheme (NDIS)	4
The team	5
Business planning and performance	6
Community Enquiries	8
Operations during the ongoing COVID-19 pandemic.....	8
Governance	9
Information systems and recordkeeping	9
Engagement and consultation.....	9
Disability	12
COVID-19 pandemic.....	12
Emergency response planning	12
Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability	12
Public Advocate involvement.....	13
Adult Safeguarding project.....	13
The National Disability Insurance Scheme.....	14
Other Commonwealth supports for people with disability.....	16
Transitioning people with disability living long-term in public health facilities to the community ...	16
Forensic Disability Service (FDS)	18
Disability advocacy funding	19
Contribution to whole-of-government initiatives.....	19
National Disability Strategy and State Plan	19
Older people	21
COVID-19 pandemic.....	21
Royal Commission into Aged Care Quality and Safety – Implementation of Recommendations .	21
Contribution to whole-of-government initiatives.....	21
National Plan to respond to the abuse of older Australians	21
Queensland: An Age-Friendly Community	22
Use of restrictive practices in residential aged care	22
Queensland Health – Palliative and End of Life Care Strategy	23
Elder Abuse Joint Issues Paper	23
Residential Aged Care Facilities - Industry Code for Visiting.....	23



Australian Department of Health - Care and Support Sector Code of Conduct	24
Voluntary Assisted Dying Act 2021 (Qld).....	24
Health.....	26
COVID-19 pandemic.....	26
Inquiry into social isolation and loneliness in Queensland	26
Use of restrictive practices in health care settings	27
Statement of Choices consultation.....	27
Health care for people with disability	28
Mental health.....	28
Inquiry into the opportunities to improve mental health outcomes for Queenslanders	28
Better Pathways: Improving Queensland's delivery of acute mental health services	28
The Chief Psychiatrist	29
Mental Health Review Tribunal (MHRT)	30
Recording of proceedings.....	30
Rockhampton Hospital	30
Law and justice.....	32
Review of Anti-Discrimination Act 1991 (Qld).....	32
Section 216 of the Criminal Code.....	32
Inspector of Detention Services Bill 2021	32
Restrictive Practices – Options for reform	33
Human Rights Act 2019	33
Legal interventions.....	34
Limitation orders.....	34
Implementation of Coroners Court recommendations.....	35
Guardianship and administration.....	37
Enduring documents	37
Enduring power of attorney Law Reform and a national register	37
Preserving the financial futures of vulnerable Queenslanders; A review of Public Trustee fees, charges, and practices	37
Financial summary	40
Appendix 1: List of submissions.....	41
Appendix 2: Speaking engagements and public hearings	43
Appendix 3: Working and advisory groups.....	45
Australian Guardianship and Administration Council (National)	45
Queensland Health COVID-19 Disability and Aged Care Working Groups	45
Halwyn Centre Multi-Agency Working group	45
Mental Health and Disability Legal Assistance Forum.....	45
Elder Abuse Prevention Unit Reference Group.....	45
Public Trustee reference groups	45
Queensland Law Society Committees	46
DJAG Human Rights Implementation Working Group	46
Public Interest Disclosures Agency Network.....	46
Appendix 4: Glossary of acronyms.....	47



The Public Advocate

Legislative functions

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

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

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

The Public Advocate has the following functions:

'promoting and protecting the rights of adults with impaired capacity (the adults) for a matter; promoting the protection of the adults from neglect, exploitation, or abuse; encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy; promoting the provision of services and facilities for the adults; and monitoring and reviewing the delivery of services and facilities to the adults'.¹

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

The Public Advocate has the power to:

'do all things necessary or convenient to perform the Public Advocate's functions'; and 'intervene in a proceeding before a court or tribunal, or in an official inquiry, involving the protection of the rights or interests of adults with impaired decision-making capacity'.³

The Public Advocate has the right to all information:

'necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter; about the arrangements for the provision of services and facilities to a class of the adults; and about the policies and procedures of a service or facility that relate to the provision of services and facilities to the adults'.⁴

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

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

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

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



Office of the Public Advocate

Vision

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

Purpose

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

Values

Relationships and influence

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

Knowledge and leadership

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

Courage and integrity

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

Operating environment

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

COVID-19

During 2021-22, the COVID-19 pandemic entered a management phase, with a significant decline in the number of active public health mandates and measures designed to prevent infection.

In December 2021, Queensland re-opened its borders to interstate fully vaccinated visitors without quarantine. This was followed, in late January 2022, with the reopening of Queensland's international border to fully vaccinated visitors and returning residents without quarantine requirements.

During January 2022, the Omicron variant of COVID-19 became prevalent across Australia's eastern seaboard. This outbreak led to many public health measures being reintroduced, including mandatory mask wearing, the restriction of unvaccinated residents and visitors from certain establishments where larger numbers of people gathered (clubs, restaurants, sporting venues etc) and the encouragement of people to work from home where possible. Queensland did not return, however, to any type of widescale lockdowns or restrictions of movement.

In establishments where the risk of significant outbreaks is higher, including disability accommodation, residential aged care, and hospitals, the mandatory vaccination policy applying to all staff and visitors (until June 2022) has remained, along with other measures, including the use of personal protective equipment by staff.



The Public Advocate has continued to monitor and contribute to the responses of government agencies and non-government organisations to the pandemic to ensure that the rights of people with impaired decision-making ability are upheld to the greatest extent possible and that their specific needs are considered.

This work includes participation in COVID-19 working groups convened by Queensland Health and engaging with stakeholders about regulations, health directions, policies, practices and other responses and actions.

Human rights

Queensland government agencies and statutory positions, including the Public Advocate, have continued to embed the principles and provisions of the *Human Rights Act 2019* into workplace operations and culture throughout 2021-22.

The office has continued to maintain staff training associated with human rights, along with ensuring that all policies and processes are compliant with the Act. The Public Advocate also contributes to the Department of Justice and Attorney General's annual reporting requirements associated with the Act.

Royal Commissions

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission or Commission) continued throughout 2021-22 with hearings covering a range of issues. The Commission will deliver its final report to the Australian Government on 29 September 2023. The report will include a series of recommendations on how to improve laws, policies, structures, and practices to ensure a more inclusive and just society.

After the tabling of its final report on 1 March 2021, the Royal Commission into Aged Care Quality and Safety concluded. The Australian Government's response to the report has resulted in a five-year plan to achieve reform across the aged care sector, inclusive of the provision of home care services and residential aged care facilities.

Many of the people whose interests are the subject of these Royal Commissions experience impaired decision-making ability. Consequently, the Public Advocate has closely monitored hearings, findings, and recommendations, including the exploration of systemic issues affecting people with impaired decision-making ability. The specific activities undertaken by the Public Advocate in relation to the Royal Commissions are detailed later in this report.

The National Disability Insurance Scheme (NDIS)

The NDIS now provides disability related supports to more than 100,000 Queenslanders. The roll out of the project officially concluded in June 2020, however several other initiatives, designed to encourage harder to reach people living with disability to access the Scheme, did not conclude until 2021-22.

The size and scope of the National Scheme mean that it is regularly evaluated and reviewed by the National Disability Insurance Agency and by federal parliamentary inquiries initiated by the Joint Standing Committee on the NDIS.

It is anticipated that the Scheme, due to a recent change in government at a national level, will be subject to a broad-reaching suite of investigative reviews during 2022-23, which may lead to significant changes to its operations and policies in the future. The Scheme's sustainability over the longer term has been noted as a critical issue, as has its need to maintain its original person-centred approach and focus on the provision of disability supports to improve inclusivity and participation in the community.

Information regarding submissions made by the Public Advocate to the NDIA and the Joint Standing Committee are included in a later section of this report.



The team

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

The Public Advocate is an independent statutory position under the *Guardianship and Administration Act* who is appointed by the Governor in Council on the recommendation of the Attorney-General. Dr John Chesterman is the current Public Advocate, being appointed to the role in August 2021.

Staff who support the Public Advocate are employed by DJAG and appointed under the *Public Service Act 2008* (Qld). The office relies on DJAG for core business supports, such as information technology and human resource services.

Code of Conduct and public sector values

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

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

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

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

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

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

Workforce planning and performance

Five full-time officers support the Public Advocate. The permanent separation rate of the office in 2021-22 was zero percent, as no permanent employees resigned during this period.

Workforce planning processes aim to align the business needs of the office with the skills and abilities of staff. The Public Advocate is committed to providing staff with professional development opportunities to improve their knowledge and skills so that they can help to protect and advance the interests of people with impaired decision-making ability. Staff attended a range of learning and development opportunities including conferences, events, and training sessions during 2021-22.

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



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

Business planning and performance

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

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

The Public Advocate has a business plan that helps guide the work of the office. The business plan is reviewed annually to define and prioritise work. The *Public Advocate's 2021-22 business plan* outlined the actions and activities that would be undertaken by the office in identifying and responding to systemic issues across multiple sectors.



Key focus areas - 2021-22 Business Plan

Major Projects

- advocate for the development of a legislative framework to authorise, regulate and monitor the use of restrictive practices across settings including residential aged care, disability services and health care;
- conduct a review of Queensland's acute mental health system;
- commence a review of Queensland's adult safeguarding measures, including the potential development of an adult safeguarding framework;
- continue to advocate for the provision of additional safeguards and protections for vulnerable NDIS participants; and,
- develop a series of key data indicators to monitor and inform the Public Advocate's systemic advocacy activities

Disability

- review issues associated with the NDIS, including the activities and responsiveness of the NDIS Quality and Safeguards Commission;
- improving the health care provided to people with disability, particularly those with cognitive impairment and complex health conditions;
- the transition of people with disability back into the community following a long stay in hospital or other institution;
- the forensic disability service system;
- the need for adequate and recurrent funding for advocacy support; and
- the Disability Royal Commission.

Older people

- aged care system reforms as recommended by the Royal Commission into Aged Care Quality and Safety;
- improving the restrictive practices legislative framework for residential aged care; and
- abuse and institutionalisation of older persons.

Health

- unregulated use of restrictive practices in hospitals;
- assessment of hospital patients who may be eligible for NDIS supports; and
- ongoing provision of disability supports for people while in hospital.

Mental Health

- Chief Psychiatrist policies, guidelines and other oversight and monitoring mechanisms; and,
- electronic recording of Mental Health Review Tribunal (MHRT) proceedings.

Law and justice

- implementation of the *Human Rights Act*; and
- the rights of people with impaired decision-making ability to form relationships and engage in sexual expression.

Guardianship and administration

- the delivery of public guardianship and administration services; and
- monitoring the implementation of the recommendations from the systemic review of the Public Trustee's fees, charges, and practices.



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

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

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

This annual report provides an overview of the activities undertaken by the Public Advocate in 2021-22 that demonstrate progress towards achieving positive changes to protect the rights and interests, and improve the lives, of people with impaired decision-making ability.

Over the past year, the Public Advocate has continued to work collaboratively with stakeholders on specific systemic issues to advance the interests of people with impaired decision-making ability. The Public Advocate participated in several working and advisory groups (noted throughout this report) and made 23 submissions on a wide range of issues to various government and parliamentary reviews and inquiries. Many of those submissions are discussed under the specific sector subject areas in this report. Appendix 1 lists all submissions that are publicly available.

Community Enquiries

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

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

During 2021-22, the Office received 123 community enquiries, 82 of which were unique contacts. Our office referred most enquiries (around three out of five unique contacts) to a variety of agencies and organisations, including members of the guardianship and administration system within Queensland (e.g., QCAT, the Offices of the Public Guardian and the Public Trustee) and in other states or territories, Community Legal Centres, the Queensland Ombudsman, and the Office of the Health Ombudsman. A total of 15 individual enquiries were referred to agencies providing individual advocacy services or the Disability Pathways Advocacy service. Other enquirers had general queries or comments, including feedback regarding publications released by the Public Advocate.

Operations during the ongoing COVID-19 pandemic

As the COVID-19 pandemic remained active during 2021-22, the office continued to work in an adjusted environment, with operations, processes and working arrangements changed to ensure work continuity.



As a small non-service delivery agency, the office continued to operate well, largely due to the commitment of staff to their work, the technology available to support working remotely, and the willingness of staff to adapt to a changing environment.

Following the successful transition of staff back into the workplace from July 2020, the office benefited from a series of planning activities undertaken to help ensure a COVID-safe workplace.

The combined experience of working remotely and in a COVID-safe workplace assisted staff in adapting to working remotely in January 2022, when the Omicron variant of COVID-19 spread rapidly throughout the community and people were encouraged to work from home.

This experience also assisted the office to maintain operations during the significant weather event causing major flooding throughout South-East Queensland in February 2022.

To help ensure the ongoing health and wellbeing of staff, the office stays informed about the prevalence of COVID-19, and the official advice from the Queensland Government about COVID-19 management strategies.

Governance

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

The Public Advocate is a member of the Justice Services Executive, participating in monthly meetings. The Justice Services Executive is a key leadership, decision-making, and accountability mechanism for the Justice Services Division of DJAG.

The Public Advocate's office fulfilled DJAG's corporate governance and accountability requirements in 2021-22 and the office was not subject to any departmental or external reviews.

Information systems and recordkeeping

The office uses DJAG's record management system to manage electronic and physical documents and follows DJAG policies and processes for record keeping. During 2021-22 the office continued to improve record keeping processes to enhance compliance with the *Public Records Act 2002* and Queensland State Archives Records Governance Policy. The office abides by the general retention and disposal schedule developed by Queensland State Archives.

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

Engagement and consultation

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

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



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

Throughout 2021-22, the Public Advocate participated in regular meetings with a range of stakeholders including; the Public Guardian and Deputy Public Guardian, the Public Trustee, the President, and representatives of QCAT, the Chief Psychiatrist, the Director of the Forensic Disability Service (FDS), the Queensland Human Rights Commissioner, the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), and the Community Visitor Program (Office of the Public Guardian). These meetings were in addition to working/advisory group meetings.

The Adult Safeguarding Project, one of the major projects undertaken by the Public Advocate during 2021-22, also involved a series of roundtables designed to consult with key stakeholders across Brisbane and regional Queensland. Further details regarding this project are included in a later section of this report.

In 2021-22, the Public Advocate was on, or represented on, the following working and advisory groups. Appendix 3 provides an overview of the purpose of each group.

Lead agency	Working/advisory group
Commonwealth Attorney-General's Department	Stakeholder Reference Group – Enduring Powers of Attorney reform
Public Advocate (Chair)	Australian Guardianship and Administration Council Australian Guardianship and Administration Council 2022 Conference Organising Committee
Queensland Health	COVID-19 Working Groups – disability and aged care Voluntary Assisted Dying – Residential Aged Care Committee QCAT Guardianship Program Governance Group
Metro North Hospital and Health Service	Halwyn Centre Multi-Agency Working group
Public Advocate (Chair)	Mental Health and Disability Legal Assistance Forum
Elder Abuse Prevention Unit	Elder Abuse Prevention Unit Reference Group
Council on the Ageing	Seniors Interest Group
Public Trustee	Government Reference Group Trust and Transparency Working Group
Queensland Law Society	Health and Disability Law Committee Elder Law Committee
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP)	Positive Behaviour Support and Restrictive Practices Review Reference Group
DJAG	Human Rights Implementation Working Group Justice Services Executive Leadership Group
Queensland Ombudsman	Public Interest Disclosures Agency Network



Disability

COVID-19 pandemic

The COVID-19 pandemic has continued to present challenges for people with disability across the last 12 months, particularly those who reside in specific disability accommodation services.

Since January 2022, Queensland has seen a gradual easing of restrictions on movement and other public health measures as a significant proportion of adults (more than 90%) are now vaccinated. As Queensland moves into the winter season, however, there are fresh concerns that a third wave of the virus is imminent, with fourth booster vaccination shots now being recommended for adults over 30 years of age. Particularly vulnerable people, like those with disability and complex health conditions, are now being offered a fifth booster shot (a fourth shot was available to particularly vulnerable people from February 2022) to increase their protection against the virus.

The Public Advocate has continued to play an active role in the Queensland Government response to the pandemic, which has included continued participation in the Queensland Health led disability working group. This group includes a broad range of stakeholders who provide feedback and direction to government regarding the pandemic response and operational issues associated with the implementation of strategies.

On 19 April 2022, members of this group participated in a 'deep dive' exercise led by Queensland Health. The intent of the exercise was to identify those aspects of the COVID-19 response affecting people with disability that had worked well and those that had not. It is anticipated that the results from the deep dive, including Queensland Health's response, will be available in the first half of the 2022-23 financial year.

Emergency response planning

The significant gaps in safeguards and protections for people with disability highlighted by the pandemic have also emerged in other emergency situations faced by the Queensland community throughout 2021-22. During the significant flood event experienced in Queensland in February 2022, many people with disability were left isolated by floodwaters without any emergency plans in place to facilitate the continuation of essential supports and services.

At the Adult Safeguarding roundtables conducted by the Public Advocate during 2021-22, stakeholders noted that there was limited inclusion and consideration of at-risk adults in emergency plans and planning processes, which has led to gaps in emergency preparedness, responses, recovery, and communication during natural disasters and emergencies. The Public Advocate will be considering the results from this consultation and making recommendations to government regarding adult safeguarding reform during the 2022-23 financial year. Further information regarding the roundtables, including the breadth of issues identified by stakeholders, is included in a later section of this report.

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

During 2021-22 the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Commission) was able to recommence face-to-face hearings (at the height of the COVID-19 pandemic, hearings were conducted remotely) on a broad range of issues including: employment; the criminal justice system; education; violence, abuse and neglect in disability services; human rights; family domestic and sexual violence (focussing on girls and young women); and the experiences of Aboriginal and Torres Strait Islander children with disability in out-of-home care.

As for 2020-21, many of these hearings were preliminary, with key themes and issues identified to be revisited by the Commission as it continues.



Public Advocate involvement

In the lead up to the Commission's hearing in relation to guardianship that will be held in November 2022, the Public Advocate was invited to attend two stakeholder roundtable sessions held in Canberra on 31 May and 1 June 2022.

More than 40 stakeholders attended each session, agreeing to the importance of:

- reducing the number and length of guardianship orders;
- ensuring equal access to support for decision making;
- keeping safeguards simple and accessible; and
- ensuring supported decision-making is inclusive of First Nations people and people from multicultural communities.⁵

The Public Advocate will be monitoring all hearings of the Commission during 2022-23.

Adult Safeguarding project

The Adult Safeguarding project was initiated by the Public Advocate in 2021-22. The focus of the project is the safeguarding of 'at-risk adults' living in the general community, in accordance with the Australian Law Reform Commission's definition of 'at-risk adults', which includes:

*people aged 18 years and over who a) have care and support needs, b) are being abused or neglected, or are at risk of abuse or neglect, and c) are unable to protect themselves from abuse or neglect because of their care or support needs.*⁶

The project aims to:

1. identify issues and gaps in current adult safeguarding legislation, policy, and practices; and
2. make recommendations about opportunities for reform to strengthen Queensland's adult safeguarding system.

To assist in the identification of current safeguarding issues and gaps in Queensland, consultation was undertaken with a broad range of stakeholders across metropolitan and regional locations, including representatives from the guardianship and administration, advocacy, emergency services, aged care, disability, health, and legal sectors.

Stakeholders were consulted during face-to-face roundtables held in Townsville, Mt Isa, Rockhampton, Toowoomba, Southport, Caloundra, and Brisbane. Additional in-person and online consultations were also undertaken with service professionals and with people with lived experience of disability.

Stakeholders identified a range of adult safeguarding issues and gaps that have implications for choice and control, dignity of risk, risk of abuse, neglect and violence, and the health and wellbeing of at-risk adults.

The issues identified included:

- elder abuse;
- financial abuse;
- scams and fraud;
- health emergency and disaster preparedness;
- first responders and crisis responses;
- authorisation and use of restrictive practices;
- information sharing;
- NDIS service provision;
- navigating complex systems and system interfaces;

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Connect Newsletter*, 14 June 2022, p 4,

<https://comms.external.royalcommission.gov.au/v/89073/1412667/email.html?k=bWf6z1HvM4ILAWGX9vCpfE_1Inr07YPx81NZxv5luw>.

⁶ Australian Law Reform Commission, Report 131 - Elder Abuse – A National Legal Response, 2017, p. 387



- appropriate, accessible, and affordable housing;
- separation of housing and support services;
- supporting transition to community living;
- decision-making;
- developing, strengthening, and maintaining informal safeguards; and
- investigation of adult safeguarding issues.

Further information regarding each issue, including implications for at-risk adults, is included in the Public Advocate's report *Adult Safeguarding in Queensland: Volume 1. Identifying the Gaps*, which was released early in the 2022-23 financial year.

The Public Advocate will be publishing volume two of this report, which will detail recommendations for reforms to improve safeguards protecting the rights and wellbeing of at-risk adults, later in the 2022-23 financial year.

The National Disability Insurance Scheme (NDIS)

The Australian Senate Standing Committee on Community Affairs - National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

In October and November 2021, the Public Advocate made two submissions to the Senate Standing Committee on Community Affairs regarding this Bill. The Bill sought amendments to the NDIS, including the introduction of two new rules (the Participant Service Guarantee and Plan Administration), and amendments to the existing rules on Plan Management and Becoming a Participant.

The Public Advocate was supportive in principle of the following inclusions in the Bill:

- transparent timeframes for NDIA responses around participant access to the NDIS, the development of plans and responses to internal reviews;
- annual reporting by the Commonwealth Ombudsman on the NDIA's performance against the participant service guarantee, as well as in relation to a participant's experiences;
- greater clarity around eligibility provisions for participants with psychosocial disability when fluctuating in nature;
- clarification of the Administrative Appeals Tribunal's (AAT) jurisdiction enabling a participant's plan to be amended (relating to a statement of participant supports in the plan) by the NDIA, while a matter is before the AAT; and
- the inclusion of people with a disability in a co-design capacity, however co-design and the criteria for such involvement are not yet clear.

The Public Advocate did, however, express some concerns in relation to the following for people with impaired decision-making ability:

- A lack of provision in the amendments to define 'reasonable and necessary supports', an issue raised in the review of the *NDIS Act 2013* by David Tune in December 2019. This term is used regularly in participant plans to determine the provision of appropriate supports and needs to be clearly defined in the legislation.
- The development of participant safeguards should they decide to use non-registered NDIS service providers for personal care services.
- Addressing the tension that exists between NDIA policy related to the appointment of plan nominees, and the substitute decision-maker criteria included in the *Guardianship and Administration Act* in Queensland.



The Parliamentary Joint Standing Committee on the NDIS – Current Scheme Implementation and Forecasting for the NDIS

The Public Advocate's submission to this Committee highlighted the interface issues associated with the Scheme that create problems for service providers and participants, and the need for a pool of reserve funding to be developed for the Scheme.

For NDIS service providers, the legislation and policy developed to create and administer the NDIS can create issues associated with understanding, compliance, and reporting. Legislative requirements associated with particular services and activities (like for example restrictive practices) can conflict or create duplicate reporting requirements which create confusion and inefficiencies. Different legislation can also apply in different accommodation settings (e.g., residential aged care in comparison with disability accommodation) meaning that service providers may need to take on dual roles (e.g., NDIS registered service provider and residential aged care provider) and work under different legislative structures and frameworks.

For NDIS participants, interface issues between systems, most commonly the NDIS and the health system, occur on two levels. The first constitute service gaps, where there may be a lack of appropriate service provision or wrap around services. This can result in, for example, participants not attending specialist appointments to monitor known health conditions or not even visiting their general practitioner on a regular basis as the necessary supports have not been supplied or are not coordinated. The second issue is associated with NDIS supports not being permitted to follow participants through different environments like hospitals or other health care facilities. This can have repercussions for, in particular, participants with an individual behaviour support plan whose behaviour may escalate in an unknown environment and may consequently be addressed with the use of emergency restrictive practices by the health care facility which may lead to significant trauma.

These issues are compounded in regional, rural, and remote areas where multi-purpose services operate. These facilities incorporate NDIS, aged care, and health services, provided from one core facility. In these circumstances, the *NDIS Act 2013*, the *Aged Care Act 1997*, and the *Public Health Act 2005 (Qld)* operate simultaneously, along with associated national standards, codes of conduct and other regulations, which differ and sometimes conflict.

The NDIS is also subject to thin markets, particularly in regional, rural, and remote areas. This can lead to instances of market failure, where the disability supports required by an NDIS participant are not available locally or in circumstances where service provider-participant relationships fail, which may be due to the NDIS participant having exceptionally complex support needs.

A pool of reserve funding would allow for an organisation, at very short notice, to provide emergency accommodation, care and supports appropriate to the person's needs and in accordance with their NDIS plan. This would provide the time necessary for alternative providers to be located and assessed for suitability, as well as for participants to consider the options available to them (in terms of alternate service providers or methods of service delivery) from a position of relative safety and security, where immediate needs are being catered for adequately.

The Public Advocate also requested that the Joint Standing Committee consider, in areas where markets are expected to remain particularly thin long term, the permanent contracting of last resort providers. This would allow providers to be available and ready to assume responsibility for NDIS participants, particularly those with complex health conditions or very high support needs, as and when required.

NDIA – Support for decision-making policy framework and approach to Home and Living consultation papers

The Public Advocate's feedback on these consultation papers supported the NDIA's commitment to the policies, which are intended to enable NDIS participants to access appropriate support to participate in decision-making processes, and exercise additional choice and control of their living arrangements.



The Public Advocate's submission to the NDIA concentrated on issues that may arise during the operationalisation of each policy including:

Supported decision-making

- Providing additional information and tips for people supporting others to make decisions that enhance 'getting to know' the person, as it is essential to the decision-making process.
- Funding to support the operationalisation of the policy, which is reflective of the additional time required to introduce new processes and provide support for decision-making.
- Education and training for NDIS staff and others involved to assist with understanding the human rights principles that underpin supported decision making, how it works and how it should be documented.
- The inclusion of safeguarding measures, including guidance material and a review process to ensure that supported decision-making practices employed are appropriate and in accordance with the policy.

Homes and living policy

- Linking into established peer networks, circles of support and 'microboards' to support participants to become informed and empowered consumers when making housing choices.
- The development of resources to assist people with impaired decision-making ability to better understand the alternative living options that are available to them, particularly those who have lived in institution-like settings for most of their lives.
- The provision of appropriate safeguards that protect a person's autonomy, rights, and health and wellbeing, particularly if they lack a community-based support network, are non-verbal, or have complex health conditions.

Other Commonwealth supports for people with disability

Submission to the Senate Standing Committees on Community Affairs - Inquiry into the purpose, intent, and adequacy of the Disability Support Pension (DSP)

The previous Public Advocate prepared a submission to this Inquiry with the support from a number of Australian Guardianship and Administration Council members. The principal issues raised in the submission included:

- The rate of the support pension being significantly lower for people under 21 years, including people living independently.
- Information regarding the range of financial entitlements available from the government for people with disability (and particularly young people) not being readily accessible and particularly complex to identify and claim.

The submission called for the DSP to be changed to a single rate for all recipients living independently, irrespective of age. It further recommended a simplification of the various allowances and supplements available to DSP recipients, as well as staff being trained to actively inquire into, and support, eligible people to access additional financial supports.

The Public Advocate subsequently appeared at a hearing of the Senate Committee related to this inquiry on 6 September 2021.

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

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



Since 2020-21, significant work has been undertaken by Queensland Health (specifically the Long Stay Rapid Response Team) to reduce the number of long-stay patients residing in health facilities. Funding for this team has recently been extended to cover operations for the next four years, which is encouraging.

Based on figures supplied by Queensland Health, in the period between 23 February and 25 May 2022:

- 160 long stay younger patients (under 65 years) were discharged from Queensland Health facilities; and,
- 625 long stay older patients were discharged from Queensland Health facilities.⁷

However, as at 25 May 2022, 221 long-stay younger patients and 332 long-stay older patients remained in Queensland Health facilities awaiting discharge to appropriate accommodation in the community. Discharge barriers continue to be related to, for younger patients, NDIS plan approval and accommodation delays; while for older patients the availability of residential aged care facility places can delay discharge.⁸

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

In line with the recommendations of the *Upholding the Right to Life and Health* report released by the Public Advocate in 2016, the Public Advocate will continue to liaise with Queensland Health and other appropriate agencies to ensure that people with disability who have complex health conditions can be safely discharged from hospitals and other health care facilities and maintain their health and wellbeing while living in the community.

Comprehensive Health Assessment Program (CHAP)

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

DSDSATSIP has maintained a commitment to CHAP as a support for frontline service delivery to people with intellectual disability. This commitment covers the fees associated with the download of CHAP documentation, via a licensing agreement with Uniquest, the proprietor of CHAP.⁹

During 2021-22, DSDSATSIP extended its commitment to the program, with an extension of its licensing agreement with Uniquest for the 2022-23 financial year. While it was originally anticipated that an online version of CHAP would be available in 2021-22, there have been a range of issues associated with moving to an online format, related to the complexities associated with 'integrating the online tool with broader health and media specialist interfaces and information technology systems'.¹⁰ Uniquest will continue to work through these issues during the course of the 2022-23 contract with DSDSATSIP.

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

⁷ Letter from Mr David Harmer, Senior Director, Social Policy, Legislation and Statutory Agencies Branch, Queensland Health, to Dr John Chesterman, Public Advocate, 9 August 2022.

⁸ Letter from Mr David Harmer, Senior Director, Social Policy, Legislation and Statutory Agencies Branch, Queensland Health, to Dr John Chesterman, Public Advocate, 9 August 2022.

⁹ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2022.

¹⁰ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 22 July 2022.



Halwyn Centre

The Halwyn Centre is a residential facility housing people with disability and complex health conditions, operated by Queensland Health and located in Red Hill. In early 2019, the Metro North Hospital and Health Service (MNHHS) announced that the centre would be closing and provided residents with an extremely short time frame to find appropriate community-based accommodation.

A targeted campaign led by parents of Halwyn residents secured a commitment from the Queensland Government to keep the Centre open, with residents able to choose to move to community-based accommodation or remain living at the facility.

The Public Advocate supports deinstitutionalisation and the provision of more community inclusive accommodation options for people with disability. He is continuing to work alongside the residents, families, and management of the Halwyn Centre, the Public Guardian and the MNHHS to address issues associated with the ongoing operation of the centre and to support the safe transition to community living of individual residents if they make the decision to move. More information regarding the multi-agency working group established to facilitate this work can be found in Appendix 3 of this report.

Between 2019 to 2021, ten residents transitioned from the Halwyn Centre to community living. The Halwyn Centre is now also registered as a provider of Supported Independent Living (SIL) accommodation and therapeutic supports and is subject to reviews and audits under the NDIS Quality and Safeguards Commission's practice standards.¹¹

The Public Advocate has been advised, by the Chief Executive of Metro North Health, that no residents transitioned out of the centre during 2021-2022. At this stage, it is also not anticipated that any residents will transition into community living in the 2022-23 financial year.¹²

Forensic Disability Service (FDS)

The FDS is a purpose-built, medium security residential and treatment facility that can accommodate and provide care for up to 10 people who are subject to a Forensic Order (Disability) under the *Mental Health Act 2016* (Qld). The service was established and operates under the *Forensic Disability Act 2011* and is managed by DSDSATSIP. The FDS was established following concerns raised in two separate reviews, which identified the need for a more appropriate model of care for people with intellectual disability or cognitive impairment who are charged with criminal offences and found to be of unsound mind or unfit for trial. The FDS was intended to provide a specialised model of care for this cohort of people, including programs to assist FDS clients with their habilitation and rehabilitation.

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

During 2021-22, three of the six clients detained in the facility on 30 June 2021 were transferred out of the facility, and three remained. Two new clients arrived at the FDS during 2021-22, meaning that a total of five clients were detained in the facility on 30 June 2022.¹³

Two clients have been detained at the FDS for over five years. However, those clients who have entered the facility more recently participate in a variety of programs, with the aim of facilitating their transition back into the community. The progress made in relation to transitioning some clients out of the facility demonstrates the continuing efforts made by the FDS to focus on supporting clients to return to living in the community.

¹¹ Letter from Adjunct Professor Jackie Hanson, Acting Chief Executive, Metro North Health, to Mary Burgess, Public Advocate, 29 July 2021.

¹² Letter from Adjunct Professor Jackie Hanson, Chief Executive, Metro North Health, to John Chesterman, Public Advocate, 14 July 2022.

¹³ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 21 July 2022.

Disability advocacy funding

Disability advocacy seeks to ensure that all people with disability can be included in the social, civic, and economic life of their community.¹⁴ Advocacy support helps people to understand that they have rights, helps to realise these rights, and promotes positive societal change.

Following a campaign in 2020-21 led by QDN ('Stand with us') the Queensland Government renewed its commitment to funding for organisations to deliver disability advocacy services across the State in critical areas.

This commitment, known as the Disability Advocacy Program, is in place until June 2023, and delivers (via non-government organisations):

- A centralised advocacy referral service called Disability Advocacy Pathways. This service, operated by Queensland Advocacy for Inclusion, is an information and referral service that assists Queenslanders with disability, their families, friends, and carers to find advocacy services to suit their needs and location.¹⁵
- Specialist services providing individual advocacy support for Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, and children and young people with disability; and
- Regionally delivered individual advocacy support to people with disability throughout Queensland.¹⁶

It is anticipated that the future of disability advocacy funding by the Queensland Government will be addressed in the forthcoming State Disability Plan (see further discussion of this later in this report).

Contribution to whole-of-government initiatives

National Disability Strategy and State Plan

Following several rounds of consultation during 2020 and 2021 (in which the Public Advocate participated), Australia's Disability Strategy 2021-31 was released on 3 December 2021. The plan calls for a whole-of-community response, inclusive of business, the non-government and services sectors and individuals, to build inclusive and accessible communities.

It includes policy priorities in the following outcome areas:

- Employment and Financial Security;
- Inclusive Homes and Communities;
- Safety Rights and Justice;
- Personal and Community Support;
- Education and Learning;
- Health and Wellbeing; and,
- Community Attitudes.¹⁷

The Queensland Government is currently developing a new State Disability Plan, designed as the primary mechanism to drive the implementation of the National Disability Strategy in Queensland. The Public Advocate has been consulted regarding the State Plan, which is scheduled for release in the second half of 2022.

¹⁴ Department of Health and Human Services (Vic), *Victorian disability advocacy futures plan 2018-2020*, Victorian Government, Melbourne 2018.

¹⁵ Disability Advocacy Pathways, *About Pathways*, < <https://disabilitypathways.org.au/>>, 2022.

¹⁶ Queensland Government, *Advocacy Supports*, < <https://www.qld.gov.au/disability/legal-and-rights/advocacy#:~:text=The%20Queensland%20Disability%20Advocacy%20Program,to%20understand%20their%20rights>>, 31 January 2022.

¹⁷ Commonwealth of Australia (Department of Social Services) 2021, *Australia's Disability Strategy 2021-31*, < <https://www.disabilitygateway.gov.au/ads/strategy>>.



Older People



Older people

COVID-19 pandemic

The continuing COVID-19 pandemic has meant that it has been another difficult year for older Queenslanders, particularly those living in residential aged care. While the restrictions placed on community movement have been gradually eased over the past year, facilities like residential aged care were among the last to have restrictions removed and are only now moving back toward a 'normal' mode of operation where facilities are no longer in lockdown, with visitors, advocates, and other representatives able to enter.

The anticipated third wave of the pandemic may mean, however, that restrictions are again tightened quickly in the future.

As for younger people with disability, the Public Advocate has continued to advocate for older people with impaired decision-making ability, with the objective of achieving an appropriate balance between the protection of their health and enjoyment of their other fundamental human rights.

This work has principally been undertaken in the COVID-19 aged care services working group led by Queensland Health. As a member of this group, the Public Advocate has actively contributed to the development of policies and practices associated with matters related to the pandemic and the protection of human rights.

Royal Commission into Aged Care Quality and Safety – Implementation of Recommendations

The final report of the Royal Commission into Aged Care Quality and Safety was tabled in the Australian parliament on 1 March 2021. The report included 148 recommendations aimed at re-building and re-focusing the aged care system in Australia.

In the twelve months following the tabling of the report, a five-year plan was developed by the Australian Government and some reforms have been implemented. Those reforms implemented have focused on; staffing (training and development and retention strategies), nutrition (an increase in payments to residential aged care to improve care and services), home care (increased package availability) and quality and safeguarding indicators to improve the standard of services and protections provided to aged care recipients.

The Public Advocate will continue to monitor the Australian government's progress implementing the recommendations of the report over the next financial year, particularly in relation to addressing the needs and protecting the rights of older people with impaired decision-making ability.

Contribution to whole-of-government initiatives

National Plan to respond to the abuse of older Australians

During 2021-22 the Public Advocate's systemic advocacy activities contributed to the following actions under the National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023:¹⁸

- Advocating on behalf of older persons with impaired decision-making ability through consultation with key stakeholders; this involved participation in various committees, reference groups, forums and conferences aimed at addressing elder abuse.
- Advocating for improved legislation, policies, service standards and care of older Australians with impaired decision-making ability.

¹⁸ Council of Attorneys-General, *National Plan to respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, Attorney-General's Department, Australian Government <<https://www.ag.gov.au/RightsAndProtections/protecting-the-rights-of-older-australians/Pages/default.aspx>>.



- Continuing to monitor the legislative, policy and practice aspects of Queensland's guardianship and administration system.
- Contributing to the consideration of national harmonisation of financial enduring powers of attorney legislation through the Commonwealth Attorney-General's Department's Stakeholder Reference Group – Enduring powers of attorney reform.

The Public Advocate's work in adult safeguarding, noted in a previous section of this report, will also contribute to Priority Area 5 of the plan – Strengthening Safeguards for Vulnerable Older Adults.

Queensland: An Age-Friendly Community

The Public Advocate has actively contributed to the Queensland: An Age-Friendly Community strategy over the last four years, specifically in regard to its Respect and Social Inclusion section, which included advocating for the regulation of the use of restrictive practices in residential aged care.

This strategy has now been completed, and DSDSATSIP (the lead agency for the strategy) has advised that:

The latest action plan supporting this strategy had 114 initiatives which were the responsibility of various government agencies. Responsible agencies have advised the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, as lead agency for the strategy, that 111 of these initiatives have now been completed, and the remaining three were either not completed or not fully implemented due to changing priorities or funding arrangements. The Department is developing a future directions statement for seniors in Queensland which will affirm the Queensland Government's commitment to creating age-friendly cities and communities where older people are connected to their communities and the important people in their lives. The statement will also commit to co-designing the next longer-term Queensland Seniors Strategy through engagement with seniors and stakeholders about what is important to them.¹⁹

The Public Advocate looks forward to contributing to the new statement and strategy in the future.

Use of restrictive practices in residential aged care

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

The issue rose to prominence nationally during the Royal Commission into Aged Care Quality and Safety and consequent media reports, including a major story on the ABC's Four Corners program.

On 22 November 2019, prior to the conclusion of the Royal Commission, new regulations were adopted in relation to the use of restrictive practices in residential aged care. The new regulations provided that;

- physical and chemical restraint can only be used as a last resort;
- state and territory legislation apply in relation to consent for the use of restrictive practices; and
- when chemical restraints are used, prescribing practitioners are bound by appropriate professional practice codes of conduct which require them to obtain informed consent for the administration of medication.²⁰

This legislation has consequently been amended, with the addition of safeguards and protections including improved documentation being required concerning the use of restrictive practices by aged care providers, and the required development of Behaviour Support Plans for all care recipients in relation to whom the use of a restrictive practice is being considered.²¹

The Public Advocate is continuing to advocate for further reform. In May 2022, the Public Advocate's position in relation to restrictive practices was published in the Australian Ageing Agenda. This article noted

¹⁹ Correspondence from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to the Office of the Public Advocate, 12 August 2022.

²⁰ *Quality of Care Principles 2014* (Cth).

²¹ Australian Government, Department of Health and Aged Care, *Restrictive practices in aged care – a last resort*, < [Public Advocate Annual Report 2021-22 | 22](https://www.health.gov.au/health-topics/aged-care/providing-aged-care-services/working-in-aged-care/restrictive-practices-in-aged-care-a-last-resort#:~:text=Contacts-Restrictive%20practices%20in%20residential%20aged%20care,%20instead%20of%20'restraint'> n.d.</p>
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various concerns associated with the aged care legislation as it currently stands, the most prominent of which is the limited protection provided by a restrictive practices regime that relies on consent or substitute consent for authorisation.

The Public Advocate has proposed that a new model for the authorisation of restrictive practices be employed across residential aged care services and other facilities (like disability accommodation services and health care). This model, known as a senior practitioner model, operates using authorisation rather than consent. It is explained in further detail in a later section of this report.

Queensland Health – Palliative and End of Life Care Strategy

In October 2021, the Public Advocate provided feedback to Queensland Health regarding its Palliative and End-of-Life Care Strategy, to be delivered through the Palliative Care Reform Program. The strategy is to guide investment and improve accessibility and equity in service delivery to ensure all Queenslanders can access high-quality palliative care.

The Public Advocate supported in principle the intent to deliver equitable access to high quality palliative care services. Feedback provided highlighted the need to include in the strategy concepts of supported decision-making, and for further resources to be provided for staff training to ensure that health care decision-making is conducted in line with the *Guardianship and Administration Act* for people with impaired decision-making ability.

The Public Advocate further submitted that there be equitable access to palliative care, especially in residential aged care settings, and for palliative care staff to receive training about how to uphold the rights of a person with impaired decision-making ability.

Elder Abuse Joint Issues Paper

In February 2022, the Public Advocate and the Queensland Law Society published *Elder Abuse – Joint Issues Paper* as an update to the former joint publication, *Elder Abuse: How well does the law cope in Queensland?* which was released in June 2010.

The paper encompasses a broad scope of issues, including those related to: human rights; victims and perpetrators of elder abuse; civil and criminal law; law enforcement; domestic and family violence; the guardianship regime; systemic abuse in the aged care system; comparative legal approaches; and access to legal assistance for older persons.

The paper was a culmination of work by a QLS cross-committee working group that included the Public Advocate and members of a number of QLS legal policy committees, including the Elder Law Committee, Human Rights and Public Law Committee, Health and Disability Law Committee, and the First Nations Legal Policy Committee.

Residential Aged Care Facilities - Industry Code for Visiting

In November 2021, the Public Advocate provided feedback in response to the revised Industry Code for Visiting Aged Care Homes public consultation paper. The code was developed and endorsed by peak organisations representing both aged care providers and aged care consumers and carers. The objective of the code is to provide an agreed industry approach to ensure continued visitation within residential aged care facilities, while preventing and minimising the potential spread of infections.

The Public Advocate's feedback related to the categories of visitors who should retain access to aged care facilities at all times regardless of any restrictions on entry that may be in place. The Public Advocate suggested an extension to one of the categories. This extension will enable residential aged care facility staff to provide support to residents who have impaired decision-making ability to assist them in nominating their preferred choice of visitor and/or to contact any relevant substitute decision-maker to provide support to the person when making this nomination.



Australian Department of Health - Care and Support Sector Code of Conduct

In December 2021, the Australian Department of Health released a Care and Support Sector Code of Conduct consultation paper. The intention of this code is to improve regulatory alignment across the care and support sector, inclusive of aged care, veterans care and disability support.

The Public Advocate, while supporting the overall intent of a common code of conduct, noted that the key challenge will be its reflection of the diversity of the sector itself. The submission included:

- the wide variety of services provided across a range of care and support environments;
- the diverse occupational and professional groups providing services – ranging from allied health professionals and health practitioners through to home maintenance and personal care workers;
- the range of support and care needs of clients;
- differing employment arrangements across the sector; and
- monitoring and compliance functions being provided by several different regulatory agencies and commissions

In addition, the Public Advocate also suggested that once the code is finalised it should include:

- an Easy English version and its translation into a variety of languages to improve accessibility; and
- guidance material that includes scenarios and examples that are applicable across various occupational groups.

Voluntary Assisted Dying Act 2021 (Qld)

On 16 September 2021, the Queensland parliament passed the *Voluntary Assisted Dying Act 2021*. The legislation was the outcome of three years of consideration and research, including two parliamentary committee inquiries and an inquiry conducted by the Queensland Law Reform Commission (QLRC).²²

The Public Advocate's predecessor (Mary Burgess) prepared submissions and gave evidence at the parliamentary committee inquiries held when the legislation was being developed, as well as being part of a Queensland Law Society working group, where various issues regarding voluntary assisted dying were discussed.

A fundamental concern held by the Public Advocate was that the legislation includes provisions that do not allow people with impaired decision-making capacity to access voluntary assisted dying. This exists as a fundamental safeguard within the legislation, which includes a requirement for a person to have decision-making capacity at all stages of the process, which must be independently assessed by two doctors.

A Queensland Health Voluntary Assisted Dying Implementation Taskforce has been established to lead the implementation of voluntary assisted dying in Queensland, with the Act set to commence from January 2023.

The Public Advocate has been consulted by the Taskforce on a range of policies and procedures being developed to assist with implementation of the legislation and is a member of the Voluntary Assisted Dying – Residential Aged Care Committee.

²² Queensland Health, *Implementation of Voluntary Assisted Dying in Queensland*, 9 June 2022 <<https://www.health.qld.gov.au/system-governance/legislation/voluntary-assisted-dying-act/implementation>>.



Health

COVID-19 pandemic

As noted throughout this report the continuing pandemic has required actions and decisions that involve and impact on Queensland's health system and the broader community.

During 2021-22, Queensland's Chief Health Officer has continued to hold extended powers granted by the Queensland Government. However, the use of these powers to restrict movement and gatherings and collect confidential information for contact tracing has generally declined, in line with increased vaccination levels within the community and the opening of national and international borders.

As noted throughout this report, the Public Advocate has been working over the last 12 months to uphold the rights of people with impaired decision-making ability during the pandemic.

Inquiry into social isolation and loneliness in Queensland

This inquiry was conducted by the Queensland Parliament's Community Support and Services Committee from 27 May 2021, with a report tabled in Parliament on 6 December 2021.

The Public Advocate prepared a submission for the inquiry and was also asked to appear at a hearing of the Committee.

In the submission, and at the hearing, the Public Advocate focused on two cohorts of people significantly affected by social isolation and loneliness; older Queenslanders and adult Queenslanders with impaired decision-making ability.

For older adults, issues contributing to social isolation and loneliness include:

- Demographic trends, including people living longer and experiencing declining mobility as they age, and smaller families with fewer extended relatives with whom to interact.
- Receiving aged care services at home – while this enables people to 'age in place' to a greater extent, it does carry a risk of isolation for service recipients, particularly if their mobility levels have declined or if their partner has passed away and/or family cannot visit regularly.

For adults with impaired decision-making ability, several factors, both individually and in combination, contribute to social isolation and loneliness:

- Lower employment rates – people with disability traditionally experience twice the rate of unemployment of people without disability.²³
- Limited accessible transport options to assist movement from one place to another, particularly for people living outside cities.
- The stigma that continues to be associated with people with disability – a 2021 national survey found that 'people with disability report experiencing discrimination and prejudice in their day-to-day life which excludes them from many domains of life including work, school, accessing services and the community'.²⁴

When older people and adults with impaired decision-making ability reside in institution-like settings (like disability accommodation services or residential aged care facilities), their social engagement can be limited to involvement with paid carers and support providers. A sense of exclusion is often generated by simply living in an arrangement that is 'different' to other people in the community which can then be exacerbated by rules governing visitation by friends and family that may be imposed by these facilities (particularly during times of natural disasters or pandemics).

²³ Australian Institute of Health Welfare (AIHW), *People with Disability in Australia 2020*, p 255.

²⁴ Centre for Research Excellence in Disability and Health, *Attitudes Matter: Findings from a national survey of community attitudes towards people with disability in Australia – Executive Summary*, Melbourne, Australia. 2021, p 4.



The Public Advocate recommended, in terms of potential reforms in Queensland, that;

- It be acknowledged that people can be socially isolated but not lonely – as each person has a different perspective on what for them constitutes the right level of social engagement.
- Consideration be given to the following actions at a state level;
 - ensuring that mainstream services (especially health, education, and transport) are accessible to people with physical and cognitive disability;
 - the application of ‘universal design’ principles to apply not only to the built environment, but to the delivery of social support programs and services; and,
 - leading innovative developments in the creation and design of inclusive communities, which, for instance, encourage and prompt ‘unplanned’ social interactions.

The final report from the Inquiry made 14 recommendations to government. The recommendations focused on increasing funding available to non-government community-based organisations, like Neighbourhood Centres and other local support groups, to provide additional activities and support aimed at preventing and responding to social isolation and loneliness.

Use of restrictive practices in health care settings

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

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

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

The Public Advocate recognises that some people experiencing physical or mental illness or cognitive disability may, on occasion, need to be restrained to protect themselves or others from harm. However, an appropriate legal framework is required for such practices to be legally undertaken.

As noted in this report, the Public Advocate, in October 2021, released a reform options paper recommending the introduction of a new legislative framework for the authorisation of the use of restrictive practices, led by a Senior Practitioner. It is anticipated that this framework could apply in a range of settings including hospital and health care services.

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

Statement of Choices consultation

In February 2022 the Public Advocate responded to a review of the Statement of Choices²⁵ document undertaken by Queensland Health.

In this feedback, the Public Advocate noted some positive changes to the document, including a clearer statement of the purpose of the form as a guide for substitute decision-makers regarding medical decisions rather than a legally binding document.

²⁵ Statement of Choices has been developed by Queensland Health and is not a legally binding document like an Enduring Power of Attorney or Advance Health Directive. Instead, it has been developed by Queensland Health for people (mainly in or recently discharged from the health care system or residing in aged care facilities) to record their personal values and preferences to be considered when nearing death. It is not a legal document, it is only a guide, and can be completed by a person themselves or a substitute decision-maker if a person has lost decision-making capacity.



The Public Advocate did, however, continue to express concerns regarding particular aspects of the documentation including:

- the look and feel of the forms creating a sense of 'legal formality' which may convey a perception that they are official and legally binding documents, despite the inclusion of any disclaimers;
- a lack of instruction on the forms on how to replace, withdraw or update them;
- the forms not requiring an independent witness verification, meaning that the practitioner who has guided the person to complete the document can witness it; and,
- a need for introductory information to be included on the forms such as reference to an Advance Health Directive being a legally binding way of providing clarity regarding a person's medical related views, wishes and preferences.

Health care for people with disability

The 'Disability' section of this report provides detail about the Public Advocate's systemic advocacy in relation to the accessibility and provision of health care for people with disability, particularly for people with intellectual disability or other cognitive impairment.

Mental health

Inquiry into the opportunities to improve mental health outcomes for Queenslanders

This inquiry was conducted by the Queensland Parliament's Mental Health Select Committee in early 2022.

As the inquiry coincided with the early stages of consultation associated with the completion by this office of a report examining the acute mental health system in Queensland, the Public Advocate's submission to the Committee focussed on acute care, raising many of the issues included in this report and detailed below.

In addition to acute care, the Public Advocate's submission also raised the issue of the complex interface between Queensland's forensic disability service system and the Queensland mental health system. It was noted that in 2018 most of the people currently subject to a Forensic Order (Disability) are managed by Authorised Mental Health Services, despite not having treatable mental illnesses.²⁶ Only a very small number of people reside at the Forensic Disability Service (Queensland's only dedicated forensic disability service), under the oversight of the Director of Forensic Disability.

On 12 April 2022, the Public Advocate was also invited to a hearing of the Mental Health Select Committee to provide additional information related to this submission.

The Inquiry's report was tabled in the Queensland Parliament in June 2022 and contained 57 recommendations for Government consideration and response.

Better Pathways: Improving Queensland's delivery of acute mental health services

During 2021-22, the Public Advocate completed a project identifying issues impacting adults with an acute mental illness at various stages of their journey through the public acute mental health system. Stakeholders with extensive expertise in the assessment, treatment, and care of people with an acute mental illness were consulted across metropolitan and regional areas of Queensland. In addition, people with a lived experience of mental illness shared their stories and provided valuable insights on their experiences of the system.

²⁶ Ogloff, Ruffles and Sullivan, *Addressing Needs and Strengthening Services: Review of the Queensland Forensic Disability Service system*, unpublished report, Centre for Forensic Behavioural Science, Swinburne University of Technology, Victoria, 2018.



The Public Advocate collaborated on the project with Professor Neeraj Gill, who contributed his extensive clinical and academic expertise in mental health, human rights, mental health law and the social and emotional wellbeing of Aboriginal and Torres Strait Islander people, as a practising psychiatrist and academic.

Issues have been identified across multiple stages of a patient's journey through the public acute mental health system.

The issues highlight the need for systemic changes to improve:

- the response to people experiencing a mental health crisis in the community;
- the experience of mental health patients in emergency department settings;
- the experiences of voluntary and involuntary patients admitted to inpatient Authorised Mental Health Services, addressing, in particular, the locked ward policy, restrictive practices, and the assessment and treatment of dual disability patients;
- the accountability and transparency of the Mental Health Review Tribunal;
- independent system safeguards and protections, inclusive of Independent Patient Rights Advisers and community visitors;
- discharge planning processes, to facilitate the increased involvement of patients, families, and supporters;
- data collection and reporting to monitor the system; and
- the development of Disability Service Plans by Hospital and Health Services that include specific mental health-based strategies.

Twenty-one recommendations have been made that are consistent with the protection of human rights in acute care settings and the associated delivery of positive outcomes for adults with impaired decision-making ability. Several of the recommendations support those made by the Queensland Government's Mental Health Select Committee following its 'Inquiry into the opportunities to improve mental health outcomes for Queenslanders'.

The report was publicly released on 23 August 2022.

The Chief Psychiatrist

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

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

The Public Advocate and the Chief Psychiatrist enjoy a positive dialogue and will continue during 2022-23 to work through issues relating to the rights and interests of patients in authorised mental health services, including the recommendations detailed in the Public Advocate's acute mental health system review.



Mental Health Review Tribunal (MHRT)

Recording of proceedings

The absence of formal recording of MHRT proceedings has been a concern of the Public Advocate for some time, and a focus of ongoing systemic advocacy.

During 2019-20, the MHRT announced that it was initiating an Audio Recording Project and would be conducting a trial of electronic audio recording of proceedings. The MHRT undertook consultation about the project and conducted the trial of recording early in the 2020-21 financial year, including sourcing appropriate software and equipment to conduct the recording, and identifying file storage solutions.²⁷ The MHRT also developed policies and procedures to support the implementation of electronic audio recordings, and commenced discussions with the Department of Justice and Attorney-General for an arrangement for recording under the *Recording of Evidence Act 1962*.²⁸

However, the MHRT subsequently advised the Public Advocate that it is their view, and that of Queensland Health, that the Tribunal is 'currently compliant with the *Recording of Evidence Act* in the manner in which it records its hearings (via written notes and summaries)'. The MHRT did acknowledge, however, that such recording is not completed electronically, and it intends to implement this type of recording in the future.²⁹

Further to this end, the Tribunal has advised that it is now liaising with Queensland Health and the Department of Justice and Attorney-General to implement an appropriate framework for electronic recording to proceed.³⁰

The Public Advocate welcomes these developments but retains some concerns regarding the extended time period associated with implementation. The recording of proceedings is a fundamental requirement of justice. In a jurisdiction which has the power to detain people indefinitely in a mental health facility or authorise involuntary treatment including the administration of powerful medications and electroconvulsive therapy (ECT), it is critical that all proceedings are recorded to ensure fairness of process and accountability. It is hoped that proceedings in the tribunal will be fully recorded by the time of next year's Annual Report.

Rockhampton Hospital

In May 2022 the Public Advocate wrote to the Health Services Chief Executive, Central Queensland Hospital and Health Service (CQHHS), to raise a number of serious concerns regarding the operation of the CQHHS acute care inpatient mental health facility, based at Rockhampton Hospital. These concerns were raised by a number of stakeholders during the consultation phase associated with *Better Pathways: Improving Queensland's delivery of acute mental health services* and *Adult Safeguarding in Queensland: Volume 1. Identifying the Gaps* (noted in previous sections of this report). Issues relate to; organisational culture, governance, patient treatment and care, staff shortages and patient safeguards and protections.

In response to these concerns, the Chief Executive has identified a number of recent changes that have occurred at the Authorised Mental Health Service (AMHS) at Rockhampton Hospital, including an increase in staffing levels.

The Public Advocate will be continuing to pursue this matter during 2022-23.

²⁷ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2021.

²⁸ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2021.

²⁹ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2022.

³⁰ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2022.



Law and justice

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

In February 2022, the Public Advocate made a submission to the Queensland Human Rights Commission regarding a review of the *Anti-Discrimination Act 1991*. The *Anti-Discrimination Act* has been in place for 30 years, so the review considered the entirety of the Act to ensure it continues to provide protection from discrimination in a contemporary setting.

The Public Advocate's submission made a number of suggestions about how the Act could be improved.

These included:

- the concept of direct and indirect discrimination not being mutually exclusive;
- the test for discrimination being made more accessible;
- the Act placing a positive duty on entities to make reasonable adjustments/accommodations for disability;
- recognition of intersectional discrimination; and
- the development of a more robust complaints process.

The Queensland Human Rights Commission is scheduled to present a report detailing the findings from this consultation in the first half of the 2022-23 financial year.

Section 216 of the *Criminal Code*

Section 216 of the *Criminal Code 1899 (Qld)* criminalises sexual activity with a person who has an 'impairment of the mind'. This provision effectively prohibits any sexual contact with a person who has a condition that falls within the definition of impairment of the mind, regardless of whether the person has the capacity to consent to and understand the nature of those activities. This law constitutes a restriction on the rights of people with impaired decision-making ability to exercise autonomy and choose to engage in sexual relationships.

In January 2022, the Public Advocate released the paper: *A discussion of section 216 of the Queensland Criminal Code – A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'*.

The paper examined section 216 of the Queensland *Criminal Code*, along with how other jurisdictions in Australia address this issue. The paper found that Queensland's approach appears to be the most restrictive of all Australian jurisdictions and that a review of this provision is warranted. The Public Advocate recommended that the Queensland Law Reform Commission review the ongoing need for this provision, as any changes to Section 216 will require wide consultation to consider the views of various stakeholders.

Inspector of Detention Services Bill 2021

In November 2021, the Public Advocate made a submission to the Legal Affairs and Safety Committee of the Queensland Parliament regarding the *Inspector of Detention Services Bill*. This Bill sought to establish an 'independent inspectorate to promote and uphold the humane treatment and conditions of people held in certain types of detention'.³¹ It aimed to achieve this policy objective by:

- establishing the role of the Inspector, to be held by the Queensland Ombudsman, setting out its functions and powers, with a focus on prevention of harm;
- providing a framework for inspections and reviews of places of detention and detention services; and
- providing a framework for independent and transparent reporting.³²

³¹ Explanatory notes, *Inspector of Detention Services Bill 2021 (Qld)*, p.1
< <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T1841.pdf>>.

³² Explanatory notes, *Inspector of Detention Services Bill 2021 (Qld)*, p.3
< <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T1841.pdf>>.



The Public Advocate noted in his submission that, although there is no direct reference in the Bill to a key international instrument in this area, the Bill sees Queensland making significant steps towards implementing the requirements of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), which Australia ratified in 2017.

As OPCAT has broad application to any place where an individual cannot leave of their own free will, the Public Advocate submitted that facilities including acute mental health services where people are held on an involuntary basis and the Forensic Disability Service should be included as places of detention under the Bill or in future OPCAT implementation legislation. There should also be consideration given to including places where the use of restrictive practices amounts to the detention of individuals, as can occur in residential aged care facilities and disability service settings.

The Committee released its report regarding this Bill in January 2022, and, at the time of writing, the Bill is progressing through Parliamentary readings and debate.

Restrictive Practices – Options for reform

In January 2022, the Public Advocate provided a submission to DSDSATSIP regarding the consultation paper, *Reforming Queensland's authorisation framework for the use of restrictive practices in NDIS and particular disability service settings*.

The paper sought feedback on how particular aspects of Queensland's authorisation framework for restrictive practices could be modified to enhance its operation under the NDIS.

The Public Advocate's submission noted that the current system of restrictive practices authorisation in Queensland is complex and uses a sub-optimal consent-based model that creates conflicts for substitute decision-makers.

The Public Advocate proposed, based on the reform options paper released by the office in October 2021, a 'senior practitioner' model to replace the current consent model. This would involve a senior practitioner, who is part of a government agency or commission, appointing those responsible for authorising the use of restrictive practices according to an individual behaviour support plan prepared by an appropriately qualified provider. The senior practitioner would have the necessary expertise to provide sector leadership, with transparency and accountability constituting key components of the authorisation process.

This model could operate consistently across multiple settings including disability services, residential aged care facilities and health care. It also has the potential to be applied in other areas such as education and residential settings for children.

Further to the above, the Public Advocate also provided feedback to the Department including:

- extending the definition of environmental restraint to include the locking of doors, gates, and windows, consistent with NDIS Rules;
- QCAT retaining its role for reviews and appeals regarding restrictive practices;
- retaining the safeguards associated with the use of chemical restraints in the current *Disability Services Act*; and,
- maintaining information sharing protocols that exist between the Department and the community visitor program under the Office of the Public Guardian as a safeguard for people subject to restrictive practices in various settings.

Human Rights Act 2019

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

The Public Advocate continued to participate in the DJAG Human Rights Implementation Working Group during 2021-22. The purpose of this working group is to coordinate a cohesive and consistent



approach to implementation activities across the Department, including training, capacity building, and embedding the principles of the Act into 'business as usual' operations.

A wide range of training, developed by the Human Rights Unit within DJAG, is now available online, including staff induction packages and a toolkit for managers. All staff who support the Public Advocate have undertaken induction and 'Human Rights 101' training, which is now a mandatory requirement for all new staff joining the office. Other relevant policies and procedures of the Office are also aligned with the Act, including staff position descriptions and recruitment procedures.

The Public Advocate also contributes information regarding the office's human rights activity and advocacy for inclusion in the DJAG Annual Report.

Legal interventions

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

In August 2021, QCAT requested that the Public Advocate consider intervening in a proceeding regarding the use of restrictive practices on a resident in an aged care facility.

QCAT was seeking submissions regarding whether personal guardians or attorneys have the authority to approve restrictive practices in a residential aged care facility. Although the *Guardianship and Administration Act* provides for specific guardians for restrictive practices in the context of the provision of disability services, this does not extend to any other named settings.

In making a submission, the Public Advocate noted that the extent of his intervention was restricted to a question of jurisdiction only and not the individual circumstances of the individual involved. He submitted that guardianship laws in Queensland do allow QCAT to appoint guardians for restrictive practices in all situations, supporting this position with specific provisions included in the *Guardianship and Administration Act* and its various amendments, together with precedents from Queensland and other jurisdictions.

The Public Advocate is currently awaiting the final QCAT decision and reasons regarding this matter.

Limitation orders

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

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

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

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

During 2021-22, the Public Advocate prepared the first report analysing limitation orders – *Public accountability, private lives – Reconsidering the Queensland guardianship system's confidentiality requirements*.



In addition to limitation orders the report also considers a related issue – section 114A of the *Guardianship and Administration Act*, which prohibits the identification of an adult involved in a guardianship proceeding.

The report makes three recommendations, two of which relate to improving the consistency and efficiency of the limitation order process. The final recommendation is that section 114A of the *Guardianship and Administration Act* be repealed, as its 'protective' benefit is now outweighed by its cost in inhibiting people from talking publicly about their experiences.

The report was publicly released on 25 August 2022.

Implementation of Coroners Court recommendations

In 2019, the Public Advocate made submissions to an inquest held at the Coroners Court of Queensland.³³ In the findings, the Coroner made two recommendations, the first being that the Queensland Government publish a policy on the provision of personal and health care for prisoners who are ageing and/or requiring palliative care, and the second that Queensland Corrective Services and the Office of Prisoner Health and Wellbeing develop policies regarding prisoners who require substitute decision-makers if they lack decision-making ability.

The Public Advocate has been consulted by the Office of Prisoner Health and Wellbeing regarding the implementation of these recommendations and looks forward to further developments in the future.

³³ Coroners Court, *Inquest into the death of Barry Haynes* (COR 207/1416, 16 November 2020).



Guardianship and Administration



Guardianship and administration

During 2021-22, the Public Advocate continued to monitor the operation of legislation, policy and practice concerning Queensland's guardianship and administration system and contributed to systemic improvements through working with DJAG, the Public Guardian, the Public Trustee and QCAT.

Enduring documents

Enduring powers of attorney law reform and a national register

In his capacity as chair of AGAC, the Public Advocate participated in 2021-22 in a stakeholder reference group examining the move to achieve greater consistency among state and territory financial enduring powers of attorney laws, and the development of a national register for financial enduring powers of attorney. The stakeholder reference group includes representation from the Australian Banking Association, the Law Council of Australia, Legal Aid, the Council on the Ageing (COTA) and the Age Discrimination Commissioner. It is hosted by the Commonwealth Attorney-General's department.

Most recently, the group has been involved in determining the key principles and model provisions that could guide the move to greater consistency across financial enduring powers of attorney laws.

After a brief delay associated with a change of federal government, the group is continuing to meet during the 2022-23 financial year.

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

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

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

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

A year after the report was tabled, the current Public Advocate released an implementation update, monitoring progress on the thirty-two reform recommendations included in the report.

This update noted that the report has led to some significant changes in the operations and governance of the Public Trustee over the last year. A comprehensive fees and charges review has recently been completed. In addition, some fees and charges changes have already been made. The Public Trustee has changed its 'Community Service Obligations rebate calculation' to remove a person's main residence in determining their assets (for that calculation). Several transparency initiatives have also been developed, including a fees and charges 'ready reckoner', a new customer investment strategy, and the establishment of a customer advocate office.



On 1 May 2022 the Queensland Parliament enacted the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2022*, establishing the Public Trustee Advisory and Monitoring Board. As recommended in the report, this Board is intended to provide additional oversight over the operations of the Public Trustee to enhance transparency and public accountability.³⁴ Recruitment of appointed board members will be undertaken in the first half of the 2022-23 financial year.

Some other reforms recommended in the report are still under consideration or in progress, and a small number will not be implemented, due to competing legal views.

The Public Advocate will continue to monitor activity surrounding the recommendations included in the report and any additional reforms implemented by the Public Trustee.

³⁴ Fentiman, S, *New Advisory Board enhances transparency of Public Trustee*, media statement, Parliament House, Brisbane, 11 May 2022, < <https://statements.qld.gov.au/statements/95129>>.



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 provided by the Queensland Government as part of the appropriation for DJAG, with the Director-General of the department being the accountable officer pursuant to the *Financial Accountability Act*. Detailed financial information relating to the operations of the department are reported in the annual report for DJAG.

A summary of office expenditure in 2021-22 is presented below.

Expenditure item	Amount
Employee related expenses	\$808,251
Supplies and Services	\$97,163
Total	\$905,414

Other payments of note

In 2021-22, the Office of the Public Advocate contracted the services of Professor Neeraj Gill to assist in the completion of the Public Advocate's review of Queensland's acute mental health system. Professor Gill's services attracted a fee of \$10,000 plus GST.

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

Overseas travel

There was no overseas travel undertaken by the Public Advocate or office staff in 2021-22.



Appendix 1: List of submissions

The following table presents a list of publicly available submissions made by the Public Advocate in 2021-22.

Date	Submitted to	Subject
July 2021	Queensland Parliament Health and Environment Committee	Inquiry into Voluntary Assisted Dying Bill 2021
July 2021	Australian Senate Standing Committees on Community Affairs	Inquiry into the purpose, intent, and adequacy of the Disability Support Pension
August 2021	National Disability Insurance Agency	Support for Decision-Making Policy Framework and approach to Home and Living
September 2021	Queensland Parliament Community Support and Services Committee	Inquiry into social isolation and loneliness in Queensland
October 2021	National Disability Insurance Agency	Proposed NDIS legislative improvements and the Participant Service Guarantee
October 2021	Australian Department of Health – Ageing and Aged Care	Improving choice in residential aged care – ACAR discontinuation discussion paper
October 2021	Parliamentary Joint Standing Committee on the NDIS	Current Scheme implementation and forecasting for the NDIS
November 2021	Australian Senate Standing Committees on Community Affairs	National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021
October 2021	Queensland Health	Palliative and End of Life Care Strategy
November 2021	Council on the Ageing (COTA)	Revised industry code for visiting aged care homes
November 2021	Queensland Parliament Legal Affairs and Safety Committee	Inspector of Detention Services Bill 2021
November 2021	Queensland Parliament Community Support and Services Committee	Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021
November 2021	Queensland Sentencing Advisory Council	The '80 percent rule': The Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 (Qld)
December 2021	Australian Department of Health	Care and Support Sector Code of Conduct
December 2021	Queensland Parliament Health and Environment Committee	Inquiry into the provision of primary, allied, and private health care, aged care and NDIS services and their impact on the Queensland public health system



Date	Submitted to	Subject
January 2022	Queensland Parliament State Development and Regional Industries Committee	Health and other Legislation Amendment Bill 2021
January 2022	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships	Reforming Queensland's authorisation framework for the use of restrictive practices in NDIS and disability service settings
February 2022	Queensland Human Rights Commission	Review of the <i>Anti-Discrimination Act 1991 (Qld)</i>
February 2022	Queensland Parliament Mental Health Select Committee	Inquiry into the opportunities to improve mental health outcomes for Queenslanders
February 2022	Office of Advance Care Planning – Queensland Health	Review of Statement of Choices form
May 2022	Queensland Attorney- General, Minister for Women and Minister for the Prevention of Domestic and Family Violence (the Hon Shannon Fentiman MP)	Review of Guardianship and Administration Regulation 2012
May 2022	Law Council of Australia	Legal and litigant issues – operation of the NDIS
May 2022	Queensland Attorney- General, Minister for Women and Minister for the Prevention of Domestic and Family Violence (the Hon Shannon Fentiman MP)	Recording of Evidence Amended Regulation 2022
June 2022	Department of Social Services	Draft National Disability Advocacy Framework



Appendix 2: Speaking engagements and public hearings

Inquiry into the purpose, intent, and adequacy of the Disability Support Pension (oral evidence)

Senate Community Affairs References Committee
Australian Parliament
6 September 2021

Inquiry into Social Isolation and Loneliness in Queensland (oral evidence)

Community Support and Services Committee
Queensland Parliament
28 September 2021

Succession and Elder Law Conference (panel member)

Queensland Law Society
24 September 2021

Substitute consent for a restrictive practice under State and Territory laws in aged care (webinar – presenter)

Leading Age Services Australia
29 September 2021

Role of the Public Advocate (guest presenter)

Amparo Advocacy Inc
Annual General Meeting
17 November 2021

Inquiry into the Public Trustee (Advisory and Monitoring Board) Amendment Bill (oral evidence)

Community Support and Services Committee
Queensland Parliament
29 November 2021

Adult safeguarding: Five years after the Australian Law Reform Commission Report (conference panel facilitator)

7th National Elder Abuse conference, Hobart
14 February 2022

Human Rights in action: Reforming regulation of restrictive practices (presenter and panel member)

QCOSS webinar
22 February 2022

Role of the Public Advocate (guest presenter)

Central Seniors Network Meeting (Queensland) – online
11 April 2022

Inquiry into the opportunities to improve mental health outcomes for Queenslanders (oral evidence)

Mental Health Select Committee
Queensland Parliament
12 April 2022

Role of the Public Advocate (guest presenter)

QDN Peer Leaders Dinner
27 April 2022

Role of the Public Advocate and mental health reform (guest presenter)

Independent Patients' Rights Advisers Forum
28 April 2022

Making an enduring power of attorney (webinar – presenter)

Compass
28 April 2022



Public Guardian Staff Excellence Awards (presenter and guest speaker)

Office of the Public Guardian
11 May 2022

The future of adult safeguarding in Australia (presenter – webinar)

Elder Law Society
Japan
14 May 2022

Substitute Decision Makers – Aged Care Managers in Queensland (contributing chairperson - webinar)

LawSense
17 May 2022

National supported decision-making framework & best practice models of guardianship (stakeholder roundtables)

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Canberra
31 May and 1 June 2022

Strengthening responses to abuse of older Australians (webinar – panel member)

ADA Law, Office of the Public Guardian, and Elder Abuse Prevention Unit Queensland
14 June 2022

Advocacy and human rights: What support workers can do to ensure customers are safeguarded (keynote address)

Disability Support Workers Conference, Brisbane
14 June 2022



Appendix 3: Working and advisory groups

Australian Guardianship and Administration Council (National)

The Australian Guardianship and Administration Council (AGAC) is the national forum of Public Advocates, Public Guardians, Guardianship Tribunals, and Public Trustees or their equivalents across Australia. AGAC's biannual meetings focus on matters of mutual concern or national significance. Dr John Chesterman is currently the chairperson of AGAC, commencing in this role in October 2021. In his role as Chair, Dr Chesterman is also chair of the 2022 AGAC Conference Organising Committee. This national conference is scheduled for October 2022 in Melbourne.

Queensland Health COVID-19 Disability and Aged Care Working Groups

The Public Advocate is a member of two COVID-19 Working Groups convened by Queensland Health. The disability group focuses on ensuring the government's COVID actions are responsive to people with disability, while the aged care group is focussed on responses for people in residential aged care. It is anticipated that the scope of both of these groups will expand in the future as Queensland Health has expressed a strong interest in the groups being maintained post pandemic as an expert stakeholder resource to assist with policy and planning.

Halwyn Centre Multi-Agency Working group

The Public Advocate played an active role on the Halwyn Centre Multi-Agency Working Group during 2021-22. This group is chaired by the MNHHS and is responsible for identifying and progressing opportunities that focus on improving the quality of life of Halwyn Centre residents and respite clients.

Mental Health and Disability Legal Assistance Forum

The purpose of the group is to promote cooperation and collaboration between legal and non-legal service providers, including social, community and health services working with people with mental health issues, intellectual disability, or other cognitive impairment. Participating in this group enhances the Public Advocate's knowledge and understanding of the needs of this cohort, and the current and emerging systemic issues that affect this vulnerable cohort. During 2021-22 the Public Advocate accepted the position of chairperson of this group.

Elder Abuse Prevention Unit Reference Group

The quarterly meetings of the Elder Abuse Prevention Unit Reference Group are attended by a broad range of government and community stakeholder representatives, including the Public Advocate. The Uniting Care Elder Abuse Prevention Unit chairs the meetings, which provide a forum for agencies to highlight emerging and current elder abuse issues, relevant work and initiatives of represented agencies, and joint strategies and actions.

Public Trustee reference groups

During the first half of 2021-22, the Public Advocate participated in the Public Trustee's Government Reference Group and the Trust and Transparency Working Group. These groups were established by the Public Trustee as part of its organisational reform and continuous improvement activities.



Queensland Law Society Committees

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

DJAG Human Rights Implementation Working Group

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

Public Interest Disclosures Agency Network

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



Appendix 4: Glossary of acronyms

AGAC	Australian Guardianship and Administration Council
CHAP	Comprehensive Health Assessment Program
COTA	Council on the Ageing
CQHHS	Central Queensland Hospital and Health Service
DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
DJAG	Department of Justice and Attorney-General
FDS	Forensic Disability Service
HHS	Hospital and Health Service
MHRT	Mental Health Review Tribunal
MNHHS	Metro North Hospital and Health Service
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
QCAT	Queensland Civil and Administrative Tribunal
QDN	Queenslanders with Disability Network
QLRC	Queensland Law Reform Commission
QLS	Queensland Law Society



