



Adult Safeguarding in Queensland

Volume 2. Reform recommendations

November 2022

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 in our work to promote and protect.

Public availability

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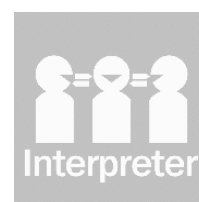
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The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice, Minister for Women and Minister for
the Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

25 November 2022

Dear Attorney-General,

Pursuant to Section 209A of the *Guardianship and Administration Act 2000* (Qld),
I present to you my report *Adult Safeguarding in Queensland, Volume 2: Reform
Recommendations*.

Yours sincerely,

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

John Chesterman (Dr)
Public Advocate



Foreword

This is the second volume of a two-volume report on Adult Safeguarding in Queensland.

As I wrote in the foreword of the first volume, this project has its origins in the very significant report produced by the Australian Law Reform Commission, entitled *Elder Abuse – A National Legal Response*, and the later adoption of the current 'National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023'. The Commission's 'adult safeguarding' recommendations, which extended further than elder abuse, focussed on the needs of 'at-risk adults', a term this project has adopted (I was privileged to be on the Commission's advisory committee).

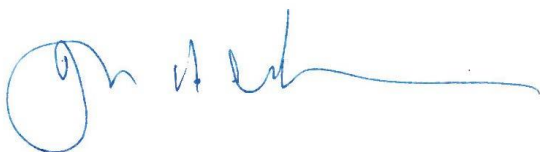
Queensland is still to make significant reforms following completion of the Commission's report. This office's work on adult safeguarding in Queensland is geared toward implementing and expanding the Commission's adult safeguarding recommendations as they relate to Queensland, taking account of our particular geographically-diverse health and social services sectors, and the characteristics of our state's people, while also being aware of, and taking account of, recent state and national regulatory developments.

Volume One of this office's report on Adult Safeguarding in Queensland – Identifying the Gaps – was completed in July 2022. It considered literature and thinking on adult safeguarding and drew heavily on the eight in-person roundtables that my colleagues and I conducted throughout Queensland during 2021 and 2022. This included roundtables in Townsville, Mt Isa, Rockhampton, Toowoomba, Southport, Caloundra, and Brisbane (where two roundtables were held). Volume One also drew on in-person and online consultations that were held with people with experiential expertise, in particular a lived experience of disability.

The consultations saw us gather expertise from representatives from a wide range of agencies and individuals, including: the Queensland Police Service, Queensland Ambulance Service, key regulators, advocacy agencies, health providers, guardianship agencies, and people with disability. During the discussions, people were asked to identify current safeguarding gaps and, more importantly, to help identify improvement options.

This second volume – Reform Recommendations – identifies ways in which the adult safeguarding system in Queensland can be improved. The 17 recommendations contained in the pages that follow have been carefully considered, crafted, workshopped, and refined, and I thank the many agencies and individuals who have so generously given us the benefit of their wisdom and experience. I look forward now to working with all relevant parties in a bid to see these recommendations implemented.

As with Volume One, the writing of this volume has been led by Jacinta Colley, who has been ably assisted by Tracey Martell and other staff members in this office (including Yuu Matsuyama). I thank Jacinta, Tracey and Yuu for their hard and excellent work.



John Chesterman (Dr)
Public Advocate



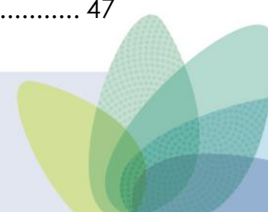
Acronyms and abbreviations

ADC	Ageing and Disability Commission
Aged Care Royal Commission	Royal Commission into Aged Care Quality and Safety
ALRC	Australian Law Reform Commission
ASU	Adult Safeguarding Unit
ART	Assessment and Referral Teams
DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
Disability Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
ILC	Information, Linkages and Capacity Building
NDAP	National Disability Advocacy Program
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NIISQ	National Injury Insurance Scheme Queensland
OPG	Office of the Public Guardian
QAS	Queensland Ambulance Service
QCAT	Queensland Civil and Administrative Tribunal
QPS	Queensland Police Service
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
TOP	Targeted Outreach Program



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Executive summary

Safeguarding can be understood as 'actions designed to protect the rights of people to be safe from the risk of harm, abuse and neglect, while maximising the choice and control they have over their lives'.¹

Currently, in Queensland, there is no clear framework for the safeguarding of at-risk adults. Rather, the safeguarding system includes a number of agencies and services that work to ensure that people who may be 'at-risk' are protected from harm and able to access support services.

Due to gaps in the current safeguarding system, supportive interventions to assist people to access the services and support they require and help protect them from further harm, while recognising their human rights, are often not available. In many situations it is also unclear where situations of concern should be reported, and which agency or services should investigate the concern.

As a result, current safeguards do not always meet the needs of at-risk adults, which can result in situations of abuse, neglect and exploitation going unaddressed and being able to continue. This can have negative consequences and lead to tragic outcomes for the at-risk adult.

It can also place additional pressure on services such as the Queensland Police Service, the Queensland Ambulance Service, the health system and the guardianship system, which are often relied upon to provide support and respond to incidents of abuse, neglect and exploitation, despite, in many cases, not being the most appropriate response to these situations.

The Adult Safeguarding project aims to:

1. identify issues and gaps in current adult safeguarding legislation, policy, and practices (Volume One of this report), and;
2. make recommendations about opportunities for reform to improve Queensland's adult safeguarding system (Volume Two of this report).

The focus of this 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', this 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.²

The Public Advocate focuses on protecting and promoting the rights of adults with impaired decision-making ability through systemic advocacy. While it is noted that many adults with impaired decision-making ability will come within the above definition of 'at-risk adults', it is also recognised that not all adults with impaired decision-making ability come within that definition. Similarly, while a significant proportion of 'at-risk adults' have impaired decision-making ability, not all do.

By focusing this safeguarding work on 'at-risk adults' this report seeks to improve protections for adults who do have 'impaired capacity for a matter' and who are at-risk, while also ensuring that 'adults with impaired capacity for a matter' who are not at-risk are not unduly affected by new safeguarding arrangements.

To assist in the identification of safeguarding issues and gaps in Queensland, consultation was undertaken through a series of roundtables and discussions with a broad range of stakeholders. This included people with lived experience of disability and representatives from the guardianship and

¹ Department of Social Services, *NDIS Quality and Safeguarding Framework*, 2016, p. 102.

² Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 387.



administration, advocacy, emergency services, aged care, disability, health care, mental health, and legal sectors.

A range of issues were identified across the consultations and are described in Volume One of this report. Notably, the safeguarding system in Queensland was considered to be fragmented and poorly suited to meet the often complex needs of at-risk adults. While there are a number of agencies involved in safeguarding at-risk adults at both a state and national level, it is often unclear who the community should call in situations where they have concerns about an at-risk adult, particularly when an emergency response is not required.

Based on the issues identified during the consultations and described in Volume One, this volume explores opportunities to improve the adult safeguarding system in Queensland and makes recommendations for reform in three key areas.

1. Establishing an adult safeguarding agency

To address gaps in the current adult safeguarding system in Queensland, and in accordance with the recommendation from the Australian Law Reform Commission,³ this report recommends that an adult safeguarding agency, based on a human rights framework, be established in Queensland. This agency will be able to receive and investigate reports of suspected abuse, neglect and exploitation of at-risk adults and take a 'supportive intervention' approach in its response.

Importantly, the creation of this agency would also enable a shift in paradigm to occur from a solely reactive approach to adult safeguarding that often relies on emergency responses and use of the guardianship system, to one which emphasises prevention and supportive interventions, while promoting the at-risk adult's right to live a life of maximum autonomy.

This report discusses several options as to how this agency could be established, but notes a preference for the establishment of a new position of Adult Safeguarding Commissioner. This option will ensure that the safeguarding agency is independent of government and the guardianship system, enables a clear delineation of roles, and has the opportunity to build relationships and networks that establish it as a place where issues of concern can be reported by the community.

2. Promoting supportive and inclusive communities

In addition to formal safeguarding responses, facilitating the development of informal safeguards is also important to ensuring the safety, rights, and wellbeing of at-risk adults.

While a new agency will have a critical role, communities should also be empowered to assume a role in safeguarding the people around them.

This report explores opportunities to utilise and develop existing knowledge, skills, and resources at a local level to enhance community safeguarding of at-risk adults, including through the development of local Adult Safeguarding Networks. This represents a proactive approach that is necessary, when combined with other protective responses, to actively prevent the abuse, neglect, and exploitation of at-risk adults.

3. Enhancing the responses of other agencies and services

The new safeguarding agency would not duplicate existing services, but rather seek to address 'gaps' in the current safeguarding system and provide referrals to other agencies as appropriate. It is therefore critical that other agencies and services are able to respond appropriately to the needs of at-risk adults and also work to prevent their abuse, neglect and exploitation.

This report discusses opportunities to strengthen the responses of key agencies and services involved in the provision of disability services, aged care services, advocacy services, restrictive

³ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 377.



practices, emergency services, guardianship and administration and the operation of the Community Visitor Program and makes recommendations relating to key areas.

The implementation of the recommendations of this report will help to strengthen safeguards for at-risk adults in Queensland in a human rights informed and compliant manner.

Furthermore, the approach recommended in this report reflects a shift in paradigm, away from a safeguarding response that is reactive and no longer fit for purpose, to one that focuses on prevention and supportive interventions.

Our current safeguarding arrangements rely too heavily on emergency services, which will only properly become engaged when a situation is dire. We also place undue weight, when seeking to instigate a safeguarding response, on assessing a person's decision-making capacity, and adult guardianship is overused as a safeguarding response.

The approach recommended in this report will change that by establishing alternative pathways by which adult safeguarding concerns can be raised and addressed. These pathways will encourage greater community interest in the wellbeing of fellow citizens and will better support the individuals involved to be at the centre of efforts to secure their wellbeing.



Recommendations

Recommendation 1

The Queensland Government should establish, through legislation, an adult safeguarding agency to support and safeguard at-risk adults (as the Australian Law Reform Commission has previously recommended).

This legislation should be underpinned by human rights principles.

The form to be taken by this agency should be chosen from the three reform options presented in this report, noting the Public Advocate's preference for Option A, the establishment of an Adult Safeguarding Commissioner.

Recommendation 2

The adult safeguarding agency should be provided with the legislative power to investigate – on an own motion basis or following a complaint or allegation – the situation of any at-risk adult.

Recommendation 3

An 'at-risk adult' (as the Australian Law Reform Commission has recommended) should be defined as someone aged 18 years or older who:

- a) has care and support needs;
- b) is currently being abused, neglected or exploited, or is at risk of being abused, neglected or exploited; and
- c) is unable to protect themselves from abuse, neglect or exploitation because of their care and support needs.

Recommendation 4

The Queensland Government should organise a public awareness campaign to accompany the establishment of the adult safeguarding agency. The campaign should be focused on encouraging community members to identify situations of concern involving at-risk adults, and provide clear advice about where those concerns can be communicated.

Recommendation 5

The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be legislatively required to obtain the consent of any at-risk adult before investigating their circumstances, unless:

- the circumstances involve a serious case of abuse, exploitation, or neglect; or
- the at-risk adult cannot be contacted; or
- the at-risk adult does not have the capacity to provide consent to the investigation.

Recommendation 6

The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be given necessary coercive information-gathering powers that can be exercised in situations where there is a reasonable suspicion of 'serious abuse'.



Recommendation 7

The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be able to do any of the following in relation to an at-risk adult:

- (a) coordinate legal, medical and other services for the adult;
- (b) meet with relevant government agencies and other bodies and professionals to prepare a plan to stop the abuse and support the adult;
- (c) report the abuse to the police;
- (d) apply for a court order in relation to the person thought to be committing the abuse (for example, a violence intervention order); or
- (e) decide to take no further action.

Recommendation 8

The adult safeguarding agency should be empowered to provide information to any prescribed agency to enable or assist that agency:

- to provide a service to, or otherwise assist, an at-risk adult; or
- to take action to secure the safety or well-being of an at-risk adult.

Recommendation 9

Prescribed agencies should be authorised to provide personal information about at-risk adults to other prescribed agencies in circumstances where the provider of the information reasonably believes that the information will assist the recipient:

- to exercise an official function concerning the safety or wellbeing of an at-risk adult; or
- to address a concern about the safety or wellbeing of an at-risk adult that has arisen in the course of the provision of services to the adult.

Recommendation 10

The Queensland Government should facilitate the establishment of local Adult Safeguarding Networks throughout Queensland, which should be regionally based and which, in large urban areas, could also see networks established in relation to particular groups of people (such as Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities). The networks should consist of local service providers, advocates, relevant health services, emergency services, agencies with regulatory roles and other local area social care experts. The networks should also seek the involvement of people who have experience of being 'at-risk'.

Each Adult Safeguarding Network should have three core roles:

- the consideration of complex social care situations involving at-risk adults in that Network's region;
- the promotion of local-area knowledge and collaboration among Network members; and
- the development and implementation of local awareness raising activities to enhance community knowledge about preventing and responding to adult safeguarding concerns.

Recommendation 11

The Queensland Government should establish a five-year funding cycle for the Queensland Disability Advocacy Program, with an annual requirement to report on key performance measures.

Recommendation 12

The Queensland Government should advocate for the National Disability Advocacy Program to introduce five-year funding cycles.



Recommendation 13

The National Disability Insurance Agency should adopt and publicise a clear policy and associated guidelines surrounding the provision of services to any National Disability Insurance Scheme (NDIS) participant whose wellbeing is at significant risk due to the disability services market's inability to meet the participant's service entitlements.

Recommendation 14

The National Disability Insurance Agency should identify and publicise clear 'emergency contact' information that can be utilised by NDIS participants and their supporters, advocates, and representatives in situations where the absence of adequate service provision is placing the wellbeing of an NDIS participant at significant immediate risk.

Recommendation 15

The National Disability Insurance Agency should ensure that NDIS participants are able to have their entitlement to, and the provision of, funded support coordination reviewed on an urgent basis in situations where the absence of adequate support coordination is placing the well-being of an NDIS participant at significant risk.

Recommendation 16

The Queensland Government should adopt a senior practitioner model for the authorisation of restrictive practices that can be utilised across sectors including the disability, aged care, and health sectors.

Recommendation 17

Queensland's guardianship legislation should be revised to include the following in the criteria for the appointment of a guardian or administrator:

- the relevant adult is unable, even with support that is available to them, to make the relevant decision;
- there is no other viable less restrictive alternative than the appointment; and
- without the appointment the adult's immediate welfare would be at risk.



Introduction

The Public Advocate

The Public Advocate is 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 ability through systemic advocacy.

Section 209 of the *Guardianship and Administration Act* states that the functions of the Public Advocate are:

- a) promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- b) promoting the protection of the adults from neglect, exploitation, or abuse;
- c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- d) promoting the provision of services and facilities for the adults;
- e) monitoring and reviewing the delivery of services and facilities to the adults.⁴



Impaired decision-making ability

'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.⁵ If a person is unable to do one or more of these things, they may have impaired decision-making ability.

There are several conditions that may affect a person's decision-making ability. 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 ability, many will at some point in their lives. For some, impaired decision-making ability may be episodic or temporary, requiring intensive supports at specific times, while others may require lifelong support with decision-making and communicating their choices and decisions.

People with impaired decision-making ability are a broad and diverse group. They can be from all age groups, cultures, and demographics.

⁴ *Guardianship and Administration Act 2000* (Qld) s 209.

⁵ *Guardianship and Administration Act 2000* (Qld) sch 4.



Adult safeguarding

This report focuses on the safeguarding of adults living in the community.

The broad definition of safeguarding employed in this report is drawn from the definition used by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), as follows:

Safeguards can be defined as 'actions designed to protect the rights of people to be safe from the risk of harm, abuse and neglect, while maximising the choice and control they have over their lives'. Safeguards can be both informal and formal. Informal safeguards include self-advocacy and building a network of trusted relationships. Formal safeguards include legislative and administrative requirements, policies and practices, organisational culture, complaint processes (including within organisations and to external bodies like the police) and regulatory oversight of service providers' staff.⁶

As noted in this definition, while safeguarding does involve protecting people from harm, this must also be balanced with the need to promote the autonomy of people to make decisions and allow people to be the author of their own lives to the greatest extent possible. This includes enabling 'dignity of risk', which refers to the concept of affording a person the right (or dignity) to take reasonable risks, and the recognition that the impeding of this right can negatively affect personal growth, self-esteem, and overall quality of life.⁷

Adult safeguarding is also linked to fundamental human rights principles articulated in the United Nations Convention on the Rights of Persons with Disabilities and the *Human Rights Act 2019* (Qld).

Identifying the target population

In identifying the people who are the subject of concern in this adult safeguarding work, this report adopts the recommendation of the Australian Law Reform Commission (ALRC) in its report *Elder Abuse – A National Legal Response* and uses the term 'at-risk adults'.⁸ The ALRC defines 'at-risk adults' as:

people aged 18 years and over who:

- have care and support needs;
- are being abused or neglected, or are at risk of abuse or neglect; and
- are unable to protect themselves from abuse or neglect because of their care and support needs.⁹

This term is preferred to other terms such as 'adults with disability' or 'adults with impaired decision-making ability', as not all adults with disability or with impaired decision-making ability are at risk of harm. Likewise, not all adults who are at risk of harm and would most benefit from strengthened safeguarding systems have a disability or impaired decision-making ability.

This is the reason why the Public Advocate used the term 'at-risk adults' nearly ten years ago in his Churchill Fellowship report on adult safeguarding.¹⁰

The challenge then is not to rely on a person's 'status', for example as a person with a disability, when assessing the risks they face and in triggering the operation of safeguarding provisions. Rather, the preference is to enable the safeguarding functions to operate only when this is warranted by the person's particular circumstances. Utilising the term 'at-risk adults', and adopting the ALRC's recommendations in this regard, meet that challenge.

⁶ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Issues paper: Safeguards and quality* (2020) p. 2.

⁷ J. Ibrahim and M. Davis, 'Impediments to applying the "dignity of risk" principle in residential aged care services', *Australasian Journal on Ageing*, vol. 32, no. 3, 2013, pp. 188-93.

⁸ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017).

⁹ *Ibid.*, p. 387.

¹⁰ J. Chesterman, *Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults*, Report for the Winston Churchill Memorial Trust of Australia, 2013.



In discussing the cohort at the centre of this work, it is important to note that the Public Advocate's statutory role concerns promotion and protection of 'the rights of adults with impaired capacity for a matter'.¹¹ A very significant cohort of the 'at-risk adults' who are the focus of this office's adult safeguarding work are people who come within that category. However, there are some at-risk adults who would not.

In focusing this safeguarding work on 'at-risk adults' rather than 'adults with impaired capacity for a matter', the work is still true to the Public Advocate's legislative remit: both by seeking better protections for adults who do have 'impaired capacity for a matter' and who are at-risk; and by ensuring that 'adults with impaired capacity for a matter' who are not at-risk are not unduly affected by new safeguarding arrangements.

There would be an additional challenge in only enabling the proposed safeguarding protections to apply to a group of people such as 'adults with impaired capacity for a matter'. Modern human rights discourse is increasingly steering us away from needing to make determinations about whether someone has capacity or doesn't have capacity to make certain decisions. Instead, the focus is increasingly moving toward supporting people to have the ability to make their own decisions wherever possible; even decisions it was long thought that the person might not be able to make. Supported decision-making reforms are challenging past certainties in this regard and have a significant way yet to run.

This has implications for adult guardianship and other areas of substitute decision-making, including the operation of enduring powers of attorney and statutory medical decision-making roles (such as Statutory Health Attorneys in Queensland).

While substitute decision making will continue to be needed in one form or another for the foreseeable future, the challenge is to ensure that this mechanism only operates where the person wants, or needs, someone performing that role. Wherever possible, there needs to be a move away from relying on a person's 'incapacity' as the sole or principal trigger for the operation of these substitute decision-making legal mechanisms.

This trend will affect future substitute decision-making law reform. It is likely to feature prominently in recommendations that emanate next year from the Disability Royal Commission.

For present purposes, however, this report recommends the use of 'at-risk adults' for the same reasons that drove the ALRC to recommend this term.

The adult safeguarding system

In Queensland, there is no single, clear framework for safeguarding at-risk adults. Rather, there are a number of agencies that form the 'adult safeguarding system', which each have varying roles and powers to provide support to at-risk adults and protect them from harm.

As described in Volume One of this report, the system includes:

- Mainstream organisations that provide protections, services and supports to people, including at-risk adults. For example, this includes the Queensland Police Service (QPS), Queensland Ambulance Service (QAS), Queensland Health, and other health services providers.
- Service organisations which are oriented to a greater or lesser degree toward providing services to at-risk people, for example, mental health services, disability service providers, aged care service providers, advocacy agencies and non-government organisations.
- Agencies that have a particular safeguarding role in relation to at-risk adults, including the NDIS Quality and Safeguards Commission, the Aged Care Quality and Safety Commission, the Queensland Civil and Administrative Tribunal (QCAT), the Mental Health Review Tribunal, the Mental Health Court, the Chief Psychiatrist, the Public Guardian, the Public Trustee, and the Public Advocate.

¹¹ *Guardianship and Administration Act 2000* (Qld), s 209.



A number of key strategies and plans at a national and state level also guide work in this area.

This includes the 'National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023', which identifies 'strengthening safeguards for vulnerable older adults' as a priority area and commits state and territory governments to reviewing legislation to identify any gaps in safeguarding provisions.¹²

Australia's Disability Strategy 2021-2031 includes 'safety, rights and justice' as a key outcome area.¹³ Under this Strategy, through the Safety Targeted Action Plan, the Australian Government and State and Territory Governments have committed to actions that:

1. Build capability to identify and respond to risk and protective factors resulting in a person with disability experiencing, or possibly being at risk of, harm.
2. Ensure mainstream and specialist disability services provide appropriate and proportionate protections for people with disability who experience or may be at risk of harm.
3. Strengthen the design of all government service systems and the supports they provide for people with disability at risk of harm.
4. Reduce and eliminate the use of restrictive practices in all government service systems.
5. Build individual capacity and effective natural safeguards (i.e. informal supports and protections such as connection with family and community) of people with disability.¹⁴

Queensland's Disability Strategy and Seniors Strategy are currently under development, however they will likely be aligned with the respective national plans.

There are also numerous reviews and consultations underway relating to relevant systems, agencies and services.

For example, the Australian Government is currently reviewing and making changes to numerous aspects of the aged care system in response to recommendations from the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission), which delivered its final report on 26 February 2021.¹⁵

The Disability Royal Commission has also heard a range of concerns relating to the safeguarding of people with disability and is expected to deliver its final report and recommendations in September 2023.

A review of the National Disability Insurance Scheme (NDIS) was announced on 18 October 2022. It will examine a range of issues relating to the design, operation and sustainability of the scheme, as well as issues relating to the NDIS market and workforce. Under the Safety Targeted Action Plan, as noted above, the Australian Government has committed to review the NDIS Quality and Safeguarding Framework.¹⁶

Work is also occurring at a national level to align regulation across the care and support sector, including the disability, aged care and veterans' sectors.

Given the work underway in this area at a state and national level, it is timely to consider what gaps exist within the adult safeguarding system in Queensland, and how this system can be strengthened to protect at-risk adults from harm, while also upholding their right to determine the course of their lives.

¹² Council of Attorneys-General, *National plan to respond to the abuse of older Australians (elder abuse) 2019-2023*, p. 10.

¹³ Department of Social Services, *Australia's Disability Strategy 2021-2031*, Department of Social Services, 2021, p. 14.

¹⁴ Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021, p. 5.

¹⁵ Commonwealth Royal Commission into Aged Care Quality and Safety, *Final report: Care, dignity and respect, Volume 1 summary and recommendations* (2021).

¹⁶ Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021, p. 8.



The Queensland Adult Safeguarding Project

Aims and scope

The Public Advocate's Adult Safeguarding Project aims to:

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

The focus of this project is the safeguarding of at-risk adults (aged 18 years and over) living in the community. As such, safeguarding issues relating to adults in other settings such as hospitals, residential aged care, prisons, and authorised mental health facilities are outside the scope of this project.

Issues relating to these settings do remain a focus of the Public Advocate, and submissions, discussion papers and statements in these areas are available on the Public Advocate's website (www.justice.qld.gov.au/public-advocate).

Approach

To assist in identifying safeguarding issues and gaps in Queensland, consultations were undertaken with a broad range of stakeholders with professional and experiential expertise. The consultations were conducted via a series of roundtables, group and individual discussions, as well as via written information and feedback provided to the Office of the Public Advocate by those who were invited to attend in-person discussions but who were unable to participate in person.

Eight roundtables were held in locations across Queensland, including Townsville, Mount Isa, Rockhampton, Toowoomba, Caloundra, Southport, and Brisbane. The roundtables were attended by approximately 110 people from 65 different agencies, including key stakeholders from the guardianship and administration, advocacy, emergency services, aged care, disability, health, and legal sectors.

Several group discussions were also held with people with lived experience, including lived experience of disability, dementia, and carers or family members of people with dementia.

During the consultations, stakeholders identified a range of adult safeguarding issues, discussed how these issues are currently addressed, and identified opportunities to improve the response to these issues.

Further detail about the consultation program is provided in Volume One of this report, which is available on the Public Advocate's website (<https://www.justice.qld.gov.au/public-advocate/our-advocacy/justice-and-human-rights/adult-safeguarding-in-queensland2>).

For Volume Two, consultations were held with a small number of key stakeholders to obtain feedback on the draft recommendations for reform. While stakeholder feedback was considered in the development of the recommendations, the views and opinions expressed in this report do not necessarily reflect the views of all stakeholders consulted.



The Adult Safeguarding reports

Outcomes from the Adult Safeguarding Project are published as two volumes.

Volume One: Identifying the gaps

Volume One of this report describes the consultations undertaken for the purposes of this project, identifies a range of safeguarding issues for adults in Queensland, and makes the case for addressing these issues to strengthen the adult safeguarding system in Queensland.

Key areas of concern identified by consultation participants included:

- **Elder abuse:** Elder abuse was identified as a growing problem, with key challenges highlighted including awareness and identification, early intervention, and the investigation of potential elder abuse.
- **Financial abuse:** Financial abuse, including the financial abuse of older adults and misuse of powers of attorney, can be challenging to identify, and responses are often inconsistent across cases. The prevention of financial abuse is impacted by a lack of awareness about what financial abuse is, and a lack of understanding of the role and obligations associated with enduring powers of attorney.
- **Scams and fraud:** At-risk adults are often the target of scams, resulting in the loss of personal information, money, and significant stress. Strategies to prevent individuals from being the target of scams can emphasise protection and prevention, which may sometimes be achieved at the expense of choice and control.
- **Health emergency and disaster preparedness:** There is often 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 with at-risk adults during natural disasters and emergencies.
- **First responder and crisis response:** Emergency responses for at-risk adults do not always appropriately meet their needs, and can, in some circumstances, serve to escalate rather than de-escalate situations. There is a lack of alternative services for people to contact for assistance in non-emergency situations.
- **The authorisation and use of restrictive practices:** There is an absence of a clear authorisation framework for restrictive practices in community settings where care and support are provided.
- **Information sharing:** Information sharing and privacy laws and their interpretation by various agencies can limit the sharing of information critical to protecting the safety and wellbeing of at-risk adults.
- **NDIS service provision:** Thin markets, workforce shortages, and limited oversight of unregistered service providers can adversely affect eligible participants' access to high quality supports and services under the NDIS.
- **Navigating complex systems and system interfaces:** Challenges accessing services, navigating complex systems, and a lack of integration and communication between different systems can prevent at-risk adults from obtaining essential care and support when they need it.
- **Appropriate, accessible and affordable housing:** A shortage of appropriate, accessible, and affordable housing stock prevents many at-risk adults from living in accommodation that meets their needs and preferences.
- **Separation of housing and support services:** There is a need for greater separation of tenancy and other support services provided under the NDIS to prevent conflicts of interest for service providers and ensure greater choice and control for NDIS participants.
- **Supporting the transition to the community:** A person's transition to the community from settings such as hospitals and prisons can be negatively impacted by challenges with interfaces between systems, access to timely supports, and the availability of stable, appropriate housing.
- **Decision-making:** A lack of understanding about decision-making ability, the role of appointed decision-makers and assessment of decision-making ability can lead to decisions being made for, instead of with, adults with impaired decision-making ability. Navigation of guardianship systems can also be challenging and stressful for those involved.



- **Developing, strengthening, and maintaining informal safeguards:** Informal safeguards such as supporting an individual to build their skills, develop and maintain their personal relationships and connections to the community, supporting informal carers, and ensuring more inclusive communities, are critical to empowering at-risk adults and strengthening formal safeguards.
- **Investigation of adult safeguarding issues:** Gaps exist in the power and willingness of key agencies to investigate safeguarding concerns that can result in harms going unaddressed and situations of abuse, neglect or exploitation continuing.

The following hypothetical scenarios illustrate some of the safeguarding issues that were discussed across the consultations for this project. These scenarios were developed for the purpose of generating discussion at the roundtables held as part of this project, and while they are not based on individual cases, they drew heavily from real situations described in published reports, papers, and previous discussions with key stakeholders. Participants across the consultations noted that these were scenarios they had commonly encountered and shared many similar stories about situations they had seen or experienced.



Hypothetical scenario: Lee

Lee has been living alone since his wife Margaret passed away eight months ago. Lee's neighbour doesn't know him that well, but waves hello to Lee every weekend when Lee goes outside to mow the lawn and tend to his rose garden. A few weeks ago, Lee's neighbour waved hello, but Lee seemed confused and didn't wave back. Since then, Lee's neighbour has rarely seen Lee outside anymore. He also noticed that Lee's lawn and garden have become overgrown, and the bins have not been taken out for several weeks.



Hypothetical scenario: Maureen

Maureen is an older Aboriginal woman who lives at home with her family and helps to care for her grandchildren. Maureen pays most of the bills, and each time Maureen receives her pension, several of her family members will ask for money and become threatening if she refuses.



Hypothetical scenario: Troy

Troy sustained a severe traumatic brain injury as a result of a motorcycle accident three years ago and, following inpatient rehabilitation, returned home to live with his parents. Troy has high care needs that his parents are unable to meet on their own, so he receives several hours of formal support each week for activities such as showering, meal preparation, and taking his medication. Recently, Troy's support workers have reported that Troy becomes frustrated and agitated when they enter the room and has been yelling and hitting people when they get close to him. His support workers report that this has been happening more frequently and they have become concerned about their safety when working with Troy. One Friday afternoon, Troy's service provider informs his parents that due to Troy's challenging behaviours and the risk to staff, they will no longer be providing services. Troy's parents are worried about finding a new service provider and are not sure how Troy's care needs will be met in the meantime.



Hypothetical scenario: Mike

Mike has an intellectual disability and used to live with his mother, who did the cooking and cleaning and supported Mike to play tennis at the local tennis club. Since Mike's mother passed away around a year ago, Mike refuses to leave the house. He orders fast food to be delivered for each meal and has been eating french fries for most meals. Mike has not been cleaning, and take-away containers with half-eaten food have been left all over the house, leading to an infestation of cockroaches and other bugs. Mike is eligible to receive support for everyday activities but has refused these services on several occasions.



What was clear from the results of consultations is that the current adult safeguarding system in Queensland is fragmented and is often not suitable to meet the needs of at-risk adults. Improvements are required to help protect the safety, rights and wellbeing of at-risk adults, balanced with enabling people to retain as much autonomy as feasible, and make decisions about their own lives wherever possible.

Volume One is available on the Public Advocate's website (<https://www.justice.qld.gov.au/public-advocate/our-advocacy/justice-and-human-rights/adult-safeguarding-in-queensland2>)

Volume Two: Reform recommendations

Based on the issues identified in Volume One, this volume explores opportunities for reform and makes recommendations to improve Queensland's safeguarding system for at-risk adults.

Opportunities for improvement and reform relating to these topics can be broadly classified into three categories, as illustrated in Figure 1.

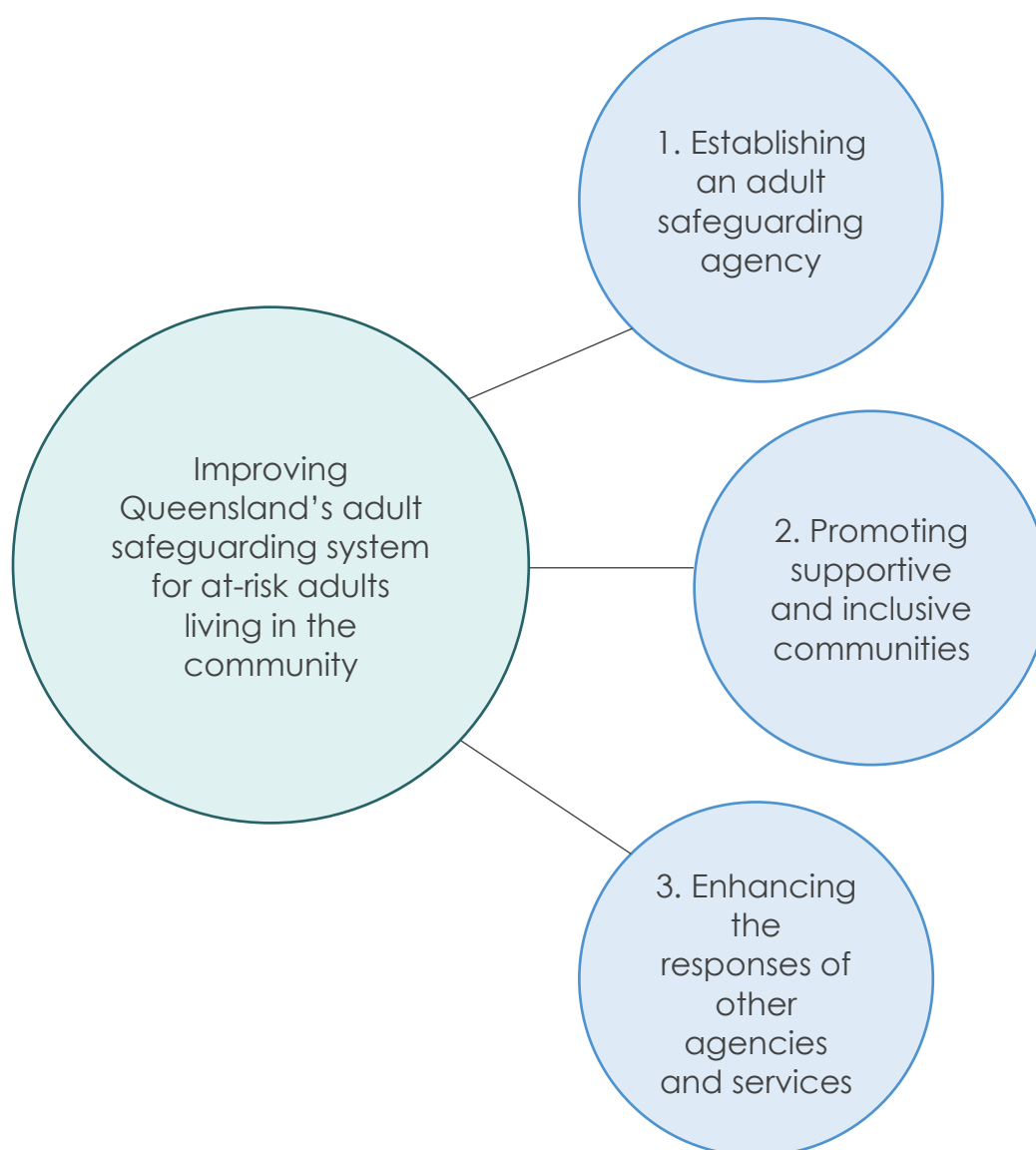


Figure 1. Framework for reform recommendations.



1. Establishing an adult safeguarding agency

In line with the recommendation from the ALRC,¹⁷ this report presents a case for establishing an adult safeguarding agency that can address the gaps in the current safeguarding system for at-risk adults. This report discusses options for how this agency could be established and makes recommendations about how it should operate to balance protection from harm with human rights concepts.

2. Promoting supportive and inclusive communities

In addition to formal safeguarding responses, facilitating the development of informal safeguards will also be important to ensuring the safety, rights, and wellbeing of at-risk adults.

While a new safeguarding agency will have a critical role, communities should also be empowered to assume a role in safeguarding the people around them.

This report explores opportunities to utilise and develop existing knowledge, skills, and resources at a local level to enhance community safeguarding of at-risk adults, including through the development of local Adult Safeguarding Networks. This also represents a proactive community response that will help to prevent the abuse, neglect, and exploitation of at-risk adults.

3. Enhancing the responses of other agencies and services

To strengthen the safeguarding system, it is critical that other agencies and services that play an important role in safeguarding can better respond to the needs of at-risk adults.

The provision of social services in response to situations of abuse, neglect or exploitation of at-risk adults form a critical part of the safeguarding response. Access to appropriate supports can have a preventative function. It is therefore critical to ensure that people are able to access the supports and services they require.

This report discusses opportunities to strengthen the response of key agencies and services involved in the provision of disability services, aged care services, advocacy services, restrictive practices, emergency services, guardianship and administration and the operation of the Community Visitor Program and makes recommendations relating to critical areas.

Each area is discussed in further detail below, inclusive of recommendations for reform. Many of the issues described reflect issues that were raised across the consultations conducted during the course of this project and are described in Volume One, however additional issues central to the issue of safeguarding are also discussed throughout Volume Two where relevant.

¹⁷ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 377.



Establishing an adult safeguarding agency

Summary of issues raised

Participants in the consultations held across Queensland for the purpose of this project reported a range of situations that they had seen or experienced where at-risk adults experienced abuse, exploitation, or neglect.

A common example provided was elder abuse, which the World Health Organisation defines as 'a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person'.¹⁸

The term 'elder abuse' is commonly used in Australia and internationally, and was used by the ALRC in their report on elder abuse,¹⁹ however it can also be referred to as 'older adult abuse', which is the term used in the 'National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023'.²⁰ This terminology is often adopted to prevent confusion with the term 'Elder' as used in Aboriginal and Torres Strait Islander culture.

This report uses the term 'elder abuse', which is consistent with the ALRC report on elder abuse that led to many of the safeguarding reforms that have occurred to date, as described further in the section below.

Consultation participants reported that elder abuse was a growing concern across Queensland.

According to a recent study by the Australian Institute of Family Studies on the prevalence of elder abuse amongst people aged 65 years and older living in the community, 14.8 per cent of individuals surveyed reported that they had experienced elder abuse in the preceding 12 months.²¹

The Elder Abuse Prevention Unit in Queensland, which operates Queensland's Elder Abuse Helpline, has reported a growing number of reports of suspected elder abuse, with 2,022 notifications recorded in the 2020-2021 financial year compared to 1,534 in the previous financial year.²²

While not the only safeguarding issue that must be addressed to better protect and support at-risk adults, elder abuse does represent a critical concern.

Consultation participants noted that, in many situations, including but not limited to elder abuse, it was often unclear who people should call for assistance. This was particularly true of cases where there was no clear emergency or crime, and as such, emergency services such as the QPS and QAS were generally not the most appropriate services to respond. This can create confusion and frustration for those seeking to report issues or obtain assistance, as they may have to repeat their story multiple times while they try to locate the correct agency to address their concerns. This can be distressing and lead to further trauma for those experiencing safeguarding issues. It can also lead to a reluctance to seek assistance or report concerns, or disengagement from the process.

¹⁸ World Health Organization, *Abuse of older people* (13 June 2022) <<https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>>.

¹⁹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017).

²⁰ Council of Attorneys-General, *National plan to respond to the abuse of older Australians (elder abuse) 2019-2023*.

²¹ L. Qu, R. Kaspiew, R. Carson, D. Roopani, J. De Maio, J. Harvey, and B. Horsfall, *National Elder Abuse Prevalence Study: Final Report*, research report, Australian Institute of Family Studies, Melbourne, 2021.

²² A. Gillbard and C. Leggatt-Cook, *Elder abuse statistics in Queensland: Year in review 2020-21*, Elder Abuse Prevention Unit, UnitingCare, Brisbane, 2021.



It was also reported that, in many of these situations, there was often no clear agency that could respond to or investigate these issues. Due to often narrow interpretations of the issues that can be investigated by an agency, responses can be limited and fragmented, and those in need of assistance can 'fall through the gaps'. In some situations, the QPS and QAS are called in situations that do not require an emergency response due to a lack of appropriate alternatives, and often there is no suitable service or place to take at-risk adults in a crisis situation to ensure their needs are addressed.

Participants across the consultations also noted that the situations experienced by at-risk adults are often complex and involve (or require a response from) more than one agency or service. In these situations, it is often unclear who should take responsibility for responding to or coordinating the response to support the rights, safety and wellbeing of the at-risk adult.

In some situations, guardianship has been used as a mechanism to prevent further abuse of at-risk adults, resulting in the appointment of a substitute decision-maker. However, this may not reflect the most appropriate or least-restrictive approach.

There was strong agreement across the consultations that an improved, coordinated response was often required to safeguard the rights and wellbeing of at-risk adults.

The current context

The need for improved safeguards for at-risk adults was raised by the ALRC in its report *Elder Abuse – A National Legal Response*, which included the recommendation that:

Adult safeguarding laws should be enacted in each state and territory. These laws should give adult safeguarding agencies the role of safeguarding and supporting 'at-risk adults'.²³

In response to the ALRC's report, the 'National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023' was developed, which includes a commitment from state and territory governments to review relevant legislation and identify gaps in safeguarding provisions.²⁴

The ALRC's report also led to many of the safeguarding reforms that have occurred, or are in train, throughout Australia. This has included the establishment of the Adult Safeguarding Unit in South Australia and the New South Wales Ageing and Disability Commission.

The South Australian Adult Safeguarding Unit

The Adult Safeguarding Unit (ASU) is located within the Office for Ageing Well in the South Australian Department of Health and Wellbeing. The ASU was established under the *Ageing and Adult Safeguarding Act 1995 (SA)* and its actions are guided by the South Australian Charter of the Rights and Freedoms of Vulnerable Adults.²⁵

The functions of the ASU include:

- (a) promoting and advocating for the rights and interests of vulnerable adults in South Australia; and
- (b) promoting participation by vulnerable adults in the making of decisions that affect their lives; and
- (c) promoting and assisting in the development of coordinated strategies for prevention and early intervention of abuse of vulnerable adults; and
- (d) to receive reports relating to the suspected abuse of vulnerable adults; and
- (e) to assess reports relating to the suspected abuse of vulnerable adults; and
- (f) to investigate reports relating to the suspected abuse of vulnerable adults; and
- (g) to coordinate responses to reports relating to the suspected abuse of a vulnerable adult with State authorities and other persons and bodies; and

²³ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 377.

²⁴ Council of Attorneys-General, *National plan to respond to the abuse of older Australians (elder abuse)2019-2023*, p. 32.

²⁵ Department for Health and Wellbeing, *South Australian Charter of the Rights and Freedoms of Vulnerable Adults*, Government of South Australia, 2020.



- (h) to refer reports relating to the suspected abuse of a vulnerable adult to appropriate persons and bodies; and
- (i) to follow up on reports that have been assessed or investigated where it is appropriate to do so; and
- (j) to collate data on matters relating to the abuse of vulnerable adults; and
- (k) to advise Ministers, State authorities and other bodies (including non-Government bodies) on matters relating to the abuse of vulnerable adults at a systemic level; and
- (l) to prepare and publish reports on matters relating to the abuse of vulnerable adults at a systemic level; and
- (m) to prepare and publish reports on issues relating to vulnerable adults that are of public importance; and
- (n) to perform such other functions as may be assigned to the Adult Safeguarding Unit by the Minister or under this or any other Act.²⁶

The ASU commenced operation in October 2019, with an initial focus on responding to reports of abuse or neglect of adults aged 65 and over, or 50 years and over for Aboriginal and Torres Strait Islander peoples. In response to a recommendation from the Adult Safeguarding Taskforce in its interim report,²⁷ the South Australian Government extended the scope of the ASU to include reports of abuse or neglect of people with disability of any age from October 2020.²⁸ In October 2022, this was extended to all adults vulnerable to abuse.²⁹

In this context, a vulnerable adult refers to 'an adult person who, by reason of age, ill health, disability, social isolation, dependence on others or disadvantage, is vulnerable to abuse'.³⁰

Abuse includes:

- (a) physical, sexual, emotional or psychological abuse of the vulnerable adult; and
- (b) financial abuse or exploitation of the vulnerable adult; and
- (c) neglect of the vulnerable adult; and
- (d) abuse, exploitation or neglect consisting of a person's omission to act in circumstances where the person owes a duty of care to the vulnerable adult; and
- (e) the abuse or exploitation of a position of trust or authority existing between the vulnerable adult and another person; and
- (f) a denial, without reasonable excuse, of the basic rights of the vulnerable adult; and
- (g) any other act or omission of a kind declared by the regulations to be included in the ambit of this section, but does not include an act or omission of a kind declared by the regulations to be excluded from the ambit of this section.³¹

Reports of abuse can be made to the ASU via a phone call or email. Reports are then assessed by the ASU to determine whether further action should be taken, including an investigation and the gathering of further information or referral to another organisation.

The ASU seeks to obtain consent from the vulnerable adult before action is taken except in particular circumstances including where:

- (a) —
 - (i) the vulnerable adult's life or physical safety is at immediate risk; or
 - (ii) the risk of abuse to which the report relates consists of an allegation that a serious criminal offence has been, or is likely to be, committed against the vulnerable person; or
 - (iii) the vulnerable adult has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken; or
 - (iv) the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult; or

²⁶ *Ageing and Adult Safeguarding Act 1995* (SA) s 15(1).

²⁷ Safeguarding Task Force, *Interim report*, Government of South Australia, 2020.

²⁸ South Australian Adult Safeguarding Unit, *Annual report 2019-2020*, Department for Health and Wellbeing, Government of South Australia, Adelaide, 2020.

²⁹ South Australian Adult Safeguarding Unit, *Annual report 2021-2022*, Department for Health and Wellbeing, Government of South Australia, Adelaide, 2020.

³⁰ *Ageing and Adult Safeguarding Act 1995* (SA) s 3.

³¹ *Ageing and Adult Safeguarding Act 1995* (SA) s 4(1).



- (v) in any other circumstances declared by the regulations to be included in the ambit of this paragraph; and
- (b) the Director approves the taking of the action.³²

An evaluation conducted on the first year of operation of the ASU, which primarily focused on its internal operations and administrative systems, found that the ASU's operational procedures, administrative systems and resources were fit-for-purpose, enabling it to effectively discharge its legal functions and responsibilities.³³

However, some stakeholders involved in the evaluation noted that the ASU's approach to information gathering and investigating was a 'softer approach' than may have been expected.³⁴ Some stakeholders also expressed concerns that the ASU could be duplicating existing services if it did not make full use of its information gathering and investigation powers.

While the ASU was viewed to be addressing gaps in the sector, the evaluation also identified that a gap may remain for adults whose decision-making ability is affected but this has not yet been recognised or documented, and who do not consent to support from the ASU.³⁵

The South Australian Law Reform Institute was commissioned by the South Australian Government to conduct a review of the *Ageing and Adult Safeguarding Act 1995 (SA)*, which included consideration of the scope and powers of the ASU.³⁶ The final report, which was made publicly available in November 2022, made a number of recommendations relating to the purpose, functions, processes and operational practices of the ASU. This included that the ASU 'should retain the responsibility under the *Ageing and Adult Safeguarding Act 1995 (SA)* for responding to reports of the suspected abuse of all adults who may be vulnerable to abuse'.³⁷

The New South Wales Ageing and Disability Commission

In New South Wales, the Ageing and Disability Commission (ADC) was established in July 2019 to protect older adults and people with disability from abuse, neglect, or exploitation.

Under the *Ageing and Disability Commissioner Act 2019 (NSW)*, the functions of the commissioner include:

- (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations,
- (b) to take further action, following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult,
- (c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults, including referrals to independent advocacy services, where appropriate,
- (e) to inquire into and report on systemic issues relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults,
- (f) to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults that the Commissioner considers appropriate,

³² *Ageing and Adult Safeguarding Act 1995 (SA)* s 24(4).

³³ Tetra Tech International Development, *Evaluation report: Adult Safeguarding Unit- Year one evaluation*, report to the Office for Ageing and Wellbeing, Department for Health and Wellbeing, n.d.

³⁴ *Ibid.*, p.i.

³⁵ Tetra Tech International Development, *Evaluation report: Adult Safeguarding Unit- Year one evaluation*, report to the Office for Ageing and Wellbeing, Department for Health and Wellbeing, n.d.

³⁶ D. Plater, D. Narayan, A. Brunacci, H. Nicholls, J. Holt, M. Okninski, O. Pandos, T. Portelli, R. Tan, K. Tran, S. Villios & J. Williams, *Autonomy and safeguarding are not mutually inconsistent: A review of the operation of the Ageing and Adult Safeguarding Act 1995 (SA)*, South Australian Law Reform Institute, Adelaide, 2022.

³⁷ *Ibid.*, p.xxxv.



- (g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (h) to monitor, assess and report on the New South Wales implementation of the National Disability Strategy (NDS).³⁸

The ADC can receive reports about:

- (a) an adult with disability or older adult if the person has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation,
- (b) circumstances that the person has reasonable grounds to believe will result in the abuse, neglect or exploitation of an adult with disability or older adult.³⁹

Reports are most often made by contacting the Ageing and Disability Abuse Helpline, which is part of the ADC.⁴⁰

Depending on the severity of the issue and circumstances of the situation, the report may be handled solely by the Helpline or may require involvement from the Community Supports and Investigations Unit of the ADC.

Many of the reports received by the ADC are handled by the Helpline, which provides early intervention and resolution support.⁴¹ This often includes providing information, support and advice and referrals; responding to immediate risk; and providing early case coordination assistance. The reports typically managed solely by the Helpline usually involve adults who have decision-making capacity and the ability to take actions, with support if required, to address their situation or protect themselves.

In the 2021-2022 financial year, 3,054 out of the 3,959 reports received were addressed through early intervention and support by the Helpline.⁴²

Reports involving more significant harm or risk of harm, criminal allegations, or repeated issues are handled by the Community Supports and Investigations Unit. Action taken by this unit may include making further inquiries to understand the adult's views and wishes, facilitating the provision of support, conducting investigations, and making referrals to other agencies and services.

ADC investigations focus on issues relating to the conduct of informal supporters, family members and community members, however it does not conduct investigations relating to the conduct of paid service providers.⁴³

The ADC is required to refer certain matters to other agencies including the Health Care Complaints Commission, the Aged Care Quality and Safety Commission, the NDIS Quality and Safeguards Commission, the NSW Police or the Director of Public Prosecutions.⁴⁴

The Commissioner also oversees the Official Community Visitor scheme.⁴⁵ Under this program, Official Community Visitors are able to visit assisted boarding houses, accommodation services where an older adult or adult with disability receives full-time care, and other visitable services, with the aim of protecting and promoting the rights of residents.⁴⁶

³⁸ *Ageing and Disability Commissioner Act 2019* (NSW) s 12(1).

³⁹ *Ageing and Disability Commissioner Act 2019* (NSW) s 13(1).

⁴⁰ Ageing and Disability Commission, *Annual report 2020-2021*.

⁴¹ Ageing and Disability Commission, *Annual report 2019-2020*.

⁴² Ageing and Disability Commission, *Annual Report 2021-2022*.

⁴³ Ageing and Disability Commission, *What we do* (November 2022) <<https://ageingdisabilitycommission.nsw.gov.au/about-us/what-we-do.html>>.

⁴⁴ Ageing and Disability Commission, *Annual report 2019-2020*, p. 22.

⁴⁵ *Ageing and Disability Commissioner Act 2019* (NSW) s 23.

⁴⁶ *Ageing and Disability Commissioner Act 2019* (NSW) ss 20, 22.



Options for the Queensland response

Queensland is yet to implement significant reforms in response to the ALRC's report.

As described in Volume One of this report, there are a range of agencies that are involved in safeguarding at-risk adults, including (but not limited to) the Office of the Public Guardian (OPG), the NDIS Quality and Safeguards Commission, the Aged Care Quality and Safety Commission, the QAS and QPS. However, there are critical gaps due to the limited remit and powers of many of these agencies. This can result in many situations of abuse going unreported and unaddressed.

Due to a lack of other available responses, the QPS and QAS are often called to respond to situations of concern that are not emergencies, but rather require a 'supportive intervention' approach to identify and address the needs of an at-risk adult. However, there is often nowhere for the QPS or QAS to refer at-risk adults in these situations.

Additionally, in many situations, the response required to support the at-risk adult may involve multiple agencies or services and it is unclear who should take overall responsibility. This can lead to fragmented responses that are not person-centred and do not fully meet the needs of the at-risk adult.

In line with the recommendations from the ALRC,⁴⁷ the establishment of an adult safeguarding agency in Queensland would seek to fill existing gaps in this sector, strengthening safeguards for at-risk adults.

The establishment of a new adult safeguarding agency would enable a clear, single point of contact for people with concerns about the abuse, neglect or exploitation of at-risk adults and, where necessary, would enable investigation of these concerns.

This would help to reduce pressure on emergency services and the guardianship system, which are often relied upon to respond in situations where there is no clear, more suitable alternative. This would also help to reduce inappropriate hospital admissions, including emergency department presentations.

The new safeguarding arrangements should adopt a human rights approach, underwriting intervention criteria with human rights concepts.

There exist various examples, nationally and internationally, of strategies to create this balance.

In the UK, six key principles for safeguarding are embedded in the *Care Act 2014*, including empowerment, prevention, proportionality, protection, partnership, and accountability.⁴⁸

South Australia's ASU is guided by the South Australian Charter of the Rights and Freedoms of Vulnerable Adults, which is based on international human rights principles. This includes:

- Dignity, respect and self-determination
- Liberty and security
- Equality and non-discrimination
- Standards of living and care
- Privacy and family
- Social and economic participation
- Freedom of thought, conscience, spirituality, religion and expression.⁴⁹

⁴⁷ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 377.

⁴⁸ Department of Health and Social Care, *Care and support statutory guidance* (2 November 2022) <<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>>.

⁴⁹ Department for Health and Wellbeing, *South Australian Charter of the Rights and Freedoms of Vulnerable Adults*, Government of South Australia, 2020.



In Queensland, the safeguarding agency's powers and operations would be informed by, and compliant with the *Human Rights Act 2019* (Qld).

In a 2019 article entitled: *The future of adult safeguarding in Australia*, the Public Advocate drew on key human rights developments in outlining ten principles to guide safeguarding reforms:

1. The target 'at-risk adult population' needs to be defined carefully so as to ensure an appropriate nexus exists between a person's right to make their own decisions and society's protective responsibilities.
2. A functionally independent agency must be empowered to investigate, both on its own motion and following a complaint or notification, any situation of concern involving an at-risk adult.
3. An assessment power, which enables experts to see and speak with the person in question, is fundamental.
4. The person's wishes must be a key consideration in any investigation.
5. Consistent with the principle of the 'dignity of risk', where the person in question has the capacity to do so, he or she must be able to refuse to have their situation investigated by, or be assisted by, the agency.
6. A 'supportive intervention' approach by the agency that enables it to identify and, where necessary, coordinate support services (e.g., aged care, disability, mental health, family violence support services) will be central to its effectiveness.
7. The agency will need to be able to make appropriate usage of existing safeguarding mechanisms (e.g., referrals to police, disability and mental health services; usage of intervention orders; applications for guardianship; referrals to health, aged care, mental health and disability complaints authorities).
8. The agency's coercive investigative powers must be commensurate with the risk faced by the person in question (e.g., there must be a reasonable suspicion that an at-risk adult is suffering 'significant harm' or something comparable before forcible entry powers are exercised).
9. The use by the agency of its coercive investigative powers (e.g., where a request to see the person, or information about them, is refused) should require a warrant and be subject to monitoring and review (preferably by a tribunal).
10. Information sharing laws need to enable relevant agencies to communicate necessary information.⁵⁰

In seeking to establish an adult safeguarding agency in Queensland there are two broad possibilities: create a new agency or expand an existing one.

In this report, four options are presented to the Queensland Government as follows:

- **Option A. Adult Safeguarding Commissioner** – the creation of a new role for an independent commissioner.
- **Option B. Expanded Public Guardian role** – the expansion of the role of the Public Guardian to include the adult safeguarding functions discussed further below.
- **Option C. Departmental unit** – the creation of a new departmental unit for adult safeguarding, for example within the Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships.
- **Option D. No change** – no safeguarding agency is established.

In the next section, each of these options is discussed in further detail, with observations made about the strengths and challenges of each approach.

Option A. Adult Safeguarding Commissioner

Option A involves establishing an independent Queensland Adult Safeguarding Commissioner; a role that could be modelled on the role of the NSW Ageing and Disability Commissioner.

It is proposed that the name for this role be the Adult Safeguarding Commissioner, rather than adopting the title that has been used in NSW of the Ageing and Disability Commissioner. The reason for this is that the Commissioner's role in Queensland would focus on at-risk adults; not all older people or people with disability fall into this category, and likewise some at-risk adults are neither old nor have a disability.

⁵⁰ J. Chesterman, 'The future of adult safeguarding in Australia', *Australian Journal of Social Issues*, vol. 54, no. 4, p. 368.



Potential strengths of this approach

A key strength of this approach is that the Adult Safeguarding Commissioner would be independent of government and other safeguarding agencies. This would enable the commissioner to more freely critique services provided by, or on behalf of, the government, in comparison with a government agency.

An independent commissioner would also be independent of the guardianship system, which would enable an approach to adult safeguarding that is not focused on guardianship or that requires an assessment of a person's capacity.

As such, a commissioner, compared to the alternative options explored in this report, is best placed to lead the shift in the safeguarding paradigm from a reactive approach that often relies on the guardianship system, to an approach that better incorporates prevention as well supportive interventions, where required.

There may also be advantages associated with having a commissioner whose role has a single focus on the safeguarding of at-risk adults, rather than an agency that offers services to multiple, different cohorts.

Members of the community may also feel more comfortable approaching or agreeing to assistance from an independent commissioner. This may contribute to increased utilisation by the community.

It is proposed that the establishment of an Adult Safeguarding Commissioner in Queensland would be accompanied by removal of the Public Guardian's current investigation role (or there would be an unnecessary and confusing duplication of roles).

There may also be opportunities for an independent commissioner to oversee other elements of the adult safeguarding system that are central to protecting the safety and rights of at-risk adults. Similar to the New South Wales ADC, which oversees the Official Community Visitor scheme, an Adult Safeguarding Commissioner in Queensland could also oversee the Community Visitor Program, which currently sits with the OPG. Independent Patient Rights Advisers, whose role involves providing advice about their rights to patients receiving care under the *Mental Health Act 2016* (Qld), could also potentially be overseen by the commissioner.

There may, however, also be some disadvantages of having the Community Visitor Program sit within a new adult safeguarding agency, mainly due to potential role conflicts and confusion. These are discussed further in Option B below.

Potential challenges of this approach

There are a number of potential challenges associated with this approach.

Firstly, the establishment of a new commissioner's office could be more resource-intensive compared to alternative options. However, some of the expenses associated with the development of a stand-alone commissioner could potentially be offset by their co-location with another independent commission like, for example, the Queensland Human Rights Commission. This could enable the Adult Safeguarding Commissioner to share corporate, administrative, and governance functions with the Queensland Human Rights Commission, which may result in resource efficiencies.

It is important to note that it is only the establishment cost that would be potentially higher under this option. The ongoing costs would be very similar whether an existing or new agency implemented the proposed new model. This report proposes a particular staffing model (discussed further later in this report) that would apply regardless of which agency might be selected by the Queensland Government to be the host.



As a new role, an Adult Safeguarding Commissioner may initially lack expertise and connections in the social care sector. However, the development of these organisational relationships and knowledge would be facilitated by the appointment of a commissioner with appropriate knowledge and experience.

There would also be an initial lack of knowledge about the Commissioner amongst those in the social care sector. As such, the development of relationships and linkages with other agencies and services would be critical to enable timely referral and collaboration where appropriate, which would need to take priority during the establishment phase of operations.

Unlike the alternative options explored in this report, the establishment of an Adult Safeguarding Commissioner would also necessitate the development of new legislative reporting frameworks.

Summary Option A. Adult Safeguarding Commissioner	
Potential strengths	Potential challenges
<ul style="list-style-type: none"> Independent of government and the guardianship system, which will enable a shift in the approach to safeguarding towards a supportive intervention approach, as opposed to a reliance on the guardianship and administration system. The independence of the agency may be viewed favourably by the community, potentially leading to greater trust and utilisation. Fewer concerns regarding potential conflicts of interest due to having a single focus on adult safeguarding. 	<ul style="list-style-type: none"> Would need to establish new relationships with relevant agencies and services. Would need to establish new reporting frameworks. Initial establishment may be more resource intensive than other options (although ongoing costs would be similar to other options).

Option B. Expanded Public Guardian role

Rather than the creation of a new agency, Option B involves broadening the powers of the Queensland Public Guardian.

This could be achieved by amending sections 12, 17, and 19 of the *Public Guardian Act 2014* (QLD), along with other ancillary changes.

The Public Guardian currently has powers to:

- Investigate any complaint or allegation that an adult [with impaired capacity for a matter] —
- is being or has been neglected, exploited or abused; or
 - has inappropriate or inadequate decision-making arrangements.⁵¹

One of the challenges in limiting the Public Guardian's investigative powers to the situations of adults with 'impaired capacity for a matter' is that an adult's wellbeing could be jeopardised by the delay caused by the need to determine their decision-making ability. Moreover, as previously discussed, the mere fact that a person has some degree of impaired decision-making ability does not automatically mean they are at risk of harm. A more targeted term is preferred.

One possibility would be to broaden the Public Guardian's powers in section 19 by replacing the current definition of 'adult' in section 17 with the proposed definition of 'at-risk adult'.

⁵¹ *Public Guardian Act 2014* (Qld) s 19(1).



Another change would be to clarify that an investigation could be undertaken on the Public Guardian's own motion and would not require a 'complaint or allegation' to be initiated.

Potential strengths of this approach

There may be some benefits of this option that are associated with the OPG's involvement in the adult guardianship field. Although this report advocates for less use of guardianship as an adult safeguarding response, guardianship will continue to be utilised and play an important role in this area.

A key strength of this option is that the OPG already has an active presence in the adult safeguarding field and is already empowered to conduct, and does conduct, investigations in relation to adults with 'impaired capacity for a matter'. Indeed, in Queensland, the Public Guardian's investigative powers are currently broader than equivalent bodies in other States and Territories.

As a result, the Public Guardian has extensive corporate knowledge, relationships with key agencies and services, internal processes, and reporting frameworks that could be drawn upon. This could provide an advantage over a newly created agency, where these may take some time and resources to develop.

However, significant cultural change would be required to expand the OPG's remit and build community awareness of this change.

As the OPG is an independent statutory office, this option would also mean that the adult safeguarding agency would be independent of government.

Potential challenges of this approach

When thinking about the challenges of this approach, it is important to consider the potential tensions and role confusion that may accompany an expanded adult safeguarding role given the current role of the Public Guardian as adult guardian and coordinator of the Community Visitor Program.

There are two situations in which a broadening of the Public Guardian's powers might conceivably lead to a conflict of interests, or at the very least an appearance of a conflict of interests.

The first of these situations is where an investigation to be conducted by the adult safeguarding agency involves investigation of OPG's role, or potential role, as guardian. For example, where an investigation identifies a failing on the part of the OPG as the guardian in that matter, or where the investigation leads to a decision about a guardianship application that involves the OPG as the potential guardian.

The second of these involves situations where an investigation is associated with the OPG's role in coordinating the Community Visitor Program. For example, where, in exercising a broader investigation power, the OPG might examine the situation of at-risk adults living in accommodation settings visited by community visitors, and this could lead to identification of inadequate monitoring by these visitors.

If the Public Guardian was to take on an expanded adult safeguarding role, systems and process would need to be put in place to address these scenarios.

However, the relationship between these roles may also present a barrier to community reporting and engagement with the adult safeguarding agency if this role were performed by the OPG. Members of the community may be reluctant to report an adult safeguarding concern due to fears that, given the OPG's role as a substitute decision-maker, an investigation may result in the appointment of a guardian.



Public perceptions of the OPG as an agency that only serves a specific cohort may be challenging to overcome, as may the association some people in the community make between the Public Guardian and the government generally.

Inclusion of the at-risk adult safeguarding investigative functions would also represent a significant extension of the OPG's current remit. OPG clients currently include adults with impaired decision-making ability, as well as children and young people in out-of-home care. At present, there is a tension between the dual roles that the OPG plays for adults and children, which could be further exacerbated by the inclusion of at-risk adults as a third cohort.

These challenges may also jeopardise the paradigm shift desired, away from reliance on the guardianship system towards a proactive, supportive intervention approach to the safeguarding of at-risk adults.

A further challenge of an expanded Public Guardian role is that there are already significant waiting times for current OPG investigations. Additional resources would be required (potentially in addition to those allocated to the operation of the new adult safeguarding agency) to enable timely investigations to be completed.

Summary Option B. Expanded Public Guardian role	
Potential strengths	Potential challenges
<ul style="list-style-type: none"> Independent of government. Organisational experience in safeguarding and investigation. Existing relationships with other agencies and services that could be drawn upon. Likely lower establishment costs compared to Option A, but similar ongoing costs. 	<ul style="list-style-type: none"> Potential conflicts of interest where an investigation involves an OPG guardian or community visitor. A close relationship with guardianship could create confusion about the focus of the safeguarding agency and potentially deter people from engaging with the agency. A close relationship with guardianship could also jeopardise the necessary shift in paradigm towards a proactive, supportive intervention approach.

Option C. Departmental unit

Option C, modelled on the South Australian ASU, involves the creation of an adult safeguarding unit within a government department. This could potentially be located within the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP).

Another option might be to place the unit within the Department of Justice and Attorney-General, however this may be too closely associated with the justice system to support the shift in the safeguarding paradigm advocated for in this report.

Therefore, the following sections consider the possible establishment of an adult safeguarding unit within DSDSATSIP.

Potential strengths of this approach

A key strength of this approach would be the ability to utilise existing relationships with other departments, agencies and services, and existing knowledge within DSDSATSIP.

The DSDSATSIP currently has a role in adult safeguarding. It is responsible for the implementation of the positive behaviour support and restrictive practices legislation that sits under the *Disability Services Act 2006* (Qld). It also manages the contracts for the Elder Abuse Prevention Unit, which



operates the Elder Abuse Helpline in Queensland, and other elder abuse services considered in Volume One.

Prior to the introduction of the NDIS, the DSDSATSIP was a direct provider of disability services.

Establishing the new agency as a unit within a government department would also ensure a clear reporting framework for the safeguarding agency, as it would be required to report to government on key performance indicators.

Similar to Option A, this approach would require a new unit to be established, however this approach is likely to be less resource intensive than that associated with the initial establishment of an independent commissioner (ongoing operating costs are likely to be similar).

As part of a government department, an adult safeguarding unit may also have additional opportunities to propose future legislative reform in this space compared to alternative options, and to better synergise its operation with other government initiatives.

Potential challenges of this approach

A potential challenge of this approach would be, unlike the alternative options outlined in this report, the agency's lack of independence from government. This may inhibit the agency's likelihood of critiquing services provided by, or on behalf of, the state government. There may also be challenges for the agency when attempting to coordinate services for an at-risk adult and obtain services and support from the federally funded aged care and NDIS systems.

There may also be some conflicts of interest with other government functions and agencies.

Locating the agency within an existing government department may also inhibit some people from contacting the unit or agreeing to be assisted by it in situations where the person has had previous challenging experiences with government agencies.

Summary Option C. Departmental unit	
Potential strengths	Potential challenges
<ul style="list-style-type: none"> • May have existing relationships with other agencies and relevant services. • Established reporting and ministerial relationships. • Likely lower establishment costs compared to Option A, but similar ongoing costs. 	<ul style="list-style-type: none"> • Not independent of government, which may deter some people who have had previous challenging experiences with government from engaging with the safeguarding agency. • Potential conflicts of interest with other government functions and areas.

Table 1 below provides a summary of key considerations for each of the options explored for the establishment of an adult safeguarding agency (Options A, B and C).



Table 1. Key considerations for options for the establishment of a new adult safeguarding agency.

Features	Option A. Adult Safeguarding Commissioner	Option B. Expanded Public Guardian role	Option C. Departmental unit
Independence	Independent of government and guardianship, which may be viewed favourably by the community	May be too closely associated with guardianship, which could deter people from engaging due to concerns that a decision-maker would be appointed	Not independent of government. This may deter people who have had prior challenging experiences with government agencies from engaging with the agency
Organisational experience	New, no prior experience	Experienced in guardianship and investigations, however significant cultural change would be required to expand the agency's remit and build community awareness of the change	Disability services, restrictive practices, Elder Abuse Prevention Unit and other elder abuse service contracts
Relationships with other agencies and services	New relationships with agencies and services needed	Existing relationships with other agencies and services	Existing relationships with other agencies and services
Range of services provided	Single focus on safeguarding at-risk adults	Services provided for a range of cohorts, some of whom are at-risk adults	Services provided for a range of cohorts, some of whom are at-risk adults
Potential conflicts of interest	None	Potential conflicts of interest where investigation involves OPG guardianship or community visitor roles	Potential conflicts of interest with other government functions and areas
Cost	Initial establishment cost; operating costs will be similar to other options	Lower establishment costs compared to Option A, similar operational costs	Lower establishment costs compared to Option A, similar operational costs
Reporting framework	Would need to be developed	Established reporting and ministerial relationships	Established reporting and ministerial relationships

Option D. No new safeguarding agency

Option D is to implement no changes to the adult safeguarding system in Queensland.

As noted above, the current adult safeguarding system in Queensland is fragmented and it is often unclear which agency should be contacted when concerns exist about an adult in the community; or which agency should and can investigate situations of concern. This can result in abuse, neglect and exploitation going unreported and unaddressed.

If no changes are made and no adult safeguarding agency is established, there is a risk that at-risk adults will experience abuse neglect or exploitation that might otherwise have been prevented or reduced in its severity. This could have wide-ranging implications, such as an increase in domestic and family violence, including elder abuse, as well as inappropriate admissions to hospital. This may also result in increasing demand being placed on systems and services that are already facing challenges including emergency services, advocacy, health services, and the guardianship system.



It could also lead to tragic outcomes, such as occurred in 2020 in the case of Ms Ann-Marie Smith, an NDIS participant who died as a result of her isolation and the neglect of her by her sole carer who was employed by a registered NDIS service provider.⁵² A number of investigations and reviews were conducted following Ms Smith's death. This includes the *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020*.⁵³ While changes were made following this report, including amendments to the *National Disability Insurance Scheme Act 2013* to lower the threshold for NDIS Quality and Safeguards Commission activity⁵⁴ and strengthen banning orders,⁵⁵ concerns remain about how at-risk adults in the general community are identified and supported.

Summary Option D. No new safeguarding agency	
Potential strengths	Potential challenges
<ul style="list-style-type: none"> Unlike the other options presented, this option does not incur direct costs relating to the establishment of an adult safeguarding agency. 	<ul style="list-style-type: none"> Continued fragmented approach to safeguarding that does not fully protect or support the safety, rights, and wellbeing of at-risk adults. Situations of abuse, neglect and exploitation may continue unaddressed. Potential increased incidence of issues such as elder abuse and domestic and family violence. This may lead to additional pressures on health, advocacy and emergency services, as well as the guardianship system.

Preference for Option A: Establishment of a new Adult Safeguarding Commissioner

Of the four possible options, this report identifies option A (a new independent commissioner) and option B (an expanded role for the Public Guardian) as the two viable reform options.

The issues identified in both volumes of this report support the ALRC's call for reform. As such, Option D, which involves no change to the current system, will not address the range of issues faced by at-risk adults and will enable many instances of abuse, neglect, and exploitation to continue.

While Option C, a new adult safeguarding departmental unit, would be preferable in comparison to no change, it may face challenges in providing Queenslanders with an independent, expert and connected agency that is able to respond to public concerns about at-risk adults. The apparent, and actual, close connection to the Queensland Government may limit such a unit's perceived and actual ability to coordinate support for people and make meaningful referrals in the wide range of fields that will be required of the adult safeguarding agency.

Of the two viable reform options (A and B), this report identifies a preference for Option A, the establishment of a new independent Adult Safeguarding Commissioner, rather than the Queensland Public Guardian taking on the adult safeguarding agency role (Option B).

There are two central reasons for this preference.

⁵² A. Robertson, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020*, report to the Commissioner of the NDIS Quality and Safeguards Commission, 2020.

⁵³ *Ibid.*

⁵⁴ *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021* (Cth).

⁵⁵ *National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Act 2020* (Cth).



First, the establishment of an Adult Safeguarding Commissioner would enable the agency to be independent of the guardianship system.

The Public Guardian already has a wide variety of safeguarding roles — as guardian of last resort, as investigator of situations concerning adults 'with impaired capacity for a matter', and as coordinator of the Community Visitor Program, which conducts visits to disability and child protection accommodation. Adding the broader remit of safeguarding at-risk adults would not sit comfortably with the Public Guardian's other roles. There would be areas of overlap and potential conflict among the Public Guardian's roles that would be difficult to manage internally and to explain publicly. That itself would likely inhibit optimal visibility and exercise of the new adult safeguarding role.

Second, a key challenge in reforming the way that Queensland safeguards the wellbeing of at-risk adults is to move towards a more modern, rights-conscious approach that supports decision-making by the person concerned and concentrates on offering and coordinating, where necessary, the provision of necessary services. The OPG, very understandably given its statutory roles, is often considered to be closely aligned with guardianship and decision-making capacity. Indeed, an adult's lack of decision-making capacity is the central criterion enlivening both the Public Guardian's guardianship and investigation roles.

The proposed safeguarding model, described in more detail below, moves away from the dominant use of guardianship and the focus that currently exists on assessing decision-making capacity. The criteria for engagement of the proposed new agency's powers is the person's current 'care and support needs' and 'inability to protect themselves'. The focus here, intentionally, is not immediately on the person's decision-making capacity.

This is a paradigm shift that would be challenging to introduce if the agency exercising the new role were also the adult guardian of last resort.

There will continue to be a need for adult guardianship and for the Public Guardian, just as there is in New South Wales where the Ageing and Disability Commissioner has been operating since 2019.

If Option A were adopted by the Queensland Government, the preference would be for the Public Guardian to no longer have an investigative function, as the broader investigative remit would be taken on by the Adult Safeguarding Commissioner.

Further details about the proposed model for the adult safeguarding agency, regardless of which of these options is selected, is discussed in the section below.

Recommendation 1. The Queensland Government should establish, through legislation, an adult safeguarding agency to support and safeguard at-risk adults (as the Australian Law Reform Commission has previously recommended).

This legislation should be underpinned by human rights principles.

The form to be taken by this agency should be chosen from the three reform options presented in this report, noting the Public Advocate's preference for Option A, the establishment of an Adult Safeguarding Commissioner.

Recommendation 2. The adult safeguarding agency should be provided with the legislative power to investigate – on an own motion basis or following a complaint or allegation – the situation of any at-risk adult.

Recommendation 3. An 'at-risk adult' (as the Australian Law Reform Commission has recommended) should be defined as someone aged 18 years or older who:

- a) has care and support needs;



- b) is currently being abused, neglected or exploited, or is at risk of being abused, neglected or exploited; and
- c) is unable to protect themselves from abuse, neglect or exploitation because of their care and support needs.

Key features and functions of the proposed adult safeguarding agency

If a new safeguarding agency is established, regardless of where this is established or located (e.g., an independent commissioner, a departmental unit, or an expanded Public Guardian role), there are several features and functions that should be considered.

A central point of contact

A key community benefit to be achieved by adopting a new Queensland adult safeguarding regime will be the encouragement of community members to identify and report situations of concern. This will require community-wide awareness building and engagement campaigns to introduce the agency and explain its purpose.

Recommendation 4. The Queensland Government should organise a public awareness campaign to accompany the establishment of the adult safeguarding agency. The campaign should be focused on encouraging community members to identify situations of concern involving at-risk adults, and provide clear advice about where those concerns can be communicated.

To support clarity as to who to call about situations of concern, it will be important for the safeguarding agency to act as a central point of contact for people in Queensland to report concerns, ask questions, and obtain further information or assistance relating to adult safeguarding.

In Australia, there is a National Elder Abuse phone line that directs callers to the relevant state or territory helpline.

Currently, in Queensland, the Elder Abuse Helpline is managed by the Elder Abuse Prevention Unit, which is operated by Uniting Care and funded by the DSDSATSIP. The Elder Abuse Prevention Unit can provide information or referrals, however it does not operate as a crisis line, provide an investigative service, or conduct any case work.

To support clarity about who to call with concerns about abuse, neglect and exploitation of at-risk adults, it is recommended that the Elder Abuse Helpline in Queensland become part of the adult safeguarding agency to ensure there is a clear, single point of contact. This would mean that the focus of the Queensland helpline would need to be expanded from a focus on elder abuse to include at-risk adults. It would operate from the adult safeguarding agency and be connected to its operations, rather than continue as a stand-alone service.

There would also be benefits of considering a model of responding to reports of abuse that is similar to that in place at the New South Wales ADC, with the helpline forming part of the safeguarding response. There, helpline staff not only provide initial information and intake services but can also provide support in the first instance in situations that are less complex and do not involve serious risk of harm.

In this model, people whose situations that helpline staff assess to be more complex, involve significant risk of harm or serious crimes, or require further information to enable the agency to determine the most appropriate course of action, would be passed on to an investigations team.



Enabling skilled helpline staff who can provide initial support in selected circumstances could assist with managing the workload for those tasked with further investigation of reports. It may also enable many callers to speak to a single person who is able to assist them, rather than having to repeat their story to multiple people, which can contribute to further distress and re-traumatisation.

Consideration will also need to be given to other contact and reporting methods offered by the agency to ensure that it is easily accessible and appropriate for people with disability, Aboriginal and Torres Strait Islander people, and people from culturally and linguistically diverse backgrounds.

It will also be critical that all staff at the adult safeguarding agency, including helpline staff, are trained to provide a person-centred, culturally appropriate, and trauma-informed response to people engaging with the service.

The Adult Safeguarding Networks discussed further below may also provide a way to better understand local community needs and develop appropriate, tailored strategies to support reporting to, and engagement with, the adult safeguarding agency.

Investigation

In situations that involve allegations of serious crimes, where the case is complex, where there are significant concerns about a person's safety, or further information is required to determine a course of action, it is envisaged that these would be handled by the investigations team within the adult safeguarding agency.

In accordance with a human rights approach that enables dignity of risk and allows people to make decisions that others may not agree with, it will be important that consent is sought from the at-risk adult before an investigation is commenced. However, there do need to be some exceptions to this rule.

One exception is where the person does not have the capacity to be able to provide this consent.

Another exception is where the adult is unable to be contacted.

There also needs to be an exception in situations where the seriousness of the situation warrants immediate intervention, without requiring an agency to obtain the consent of the person.

The ALRC recommended that:

Adult safeguarding laws should provide that the consent of an at-risk adult must be secured before safeguarding agencies investigate, or take any other action, in relation to the abuse or neglect of the adult. However, consent should not be required:

- (a) in serious cases of physical abuse, sexual abuse, or neglect; or
- (b) if the safeguarding agency cannot contact the adult, despite extensive efforts to do so; or
- (c) if the adult lacks the legal capacity to give consent, in the circumstances.⁵⁶

The recommendation below considers these exceptions and is similar to those proposed by the ALRC.

Recommendation 5. The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be legislatively required to obtain the consent of any at-risk adult before investigating their circumstances, unless:

- the circumstances involve a serious case of abuse, exploitation, or neglect; or
- the at-risk adult cannot be contacted; or
- the at-risk adult does not have the capacity to provide consent to the investigation.

⁵⁶ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 392.



To enable the adult safeguarding agency to effectively fulfil its function it will require coercive information-gathering powers that will allow it to gather the information and evidence necessary to understand the situation and determine the most appropriate course of action to support the at-risk adult.

For example, this could be similar to the powers currently held by the Public Guardian in Queensland. When investigating a complaint, the Public Guardian has powers to require people to provide information and access relevant documentation.⁵⁷

In many situations, the safeguarding agency will be able to provide appropriate support to the at-risk adult without the use of these powers. As such, the ALRC recommended that these powers are able to be exercised by adult safeguarding agencies only in situations of 'serious abuse'.

Adult safeguarding laws should provide adult safeguarding agencies with necessary coercive information-gathering powers, such as the power to require a person to answer questions and produce documents. Agencies should only be able to exercise such powers where they have reasonable grounds to suspect that there is 'serious abuse' of an at-risk adult, and only to the extent that it is necessary to safeguard and support the at-risk adult.⁵⁸

The following recommendation is similar.

Recommendation 6. The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be given necessary coercive information-gathering powers that can be exercised in situations where there is a reasonable suspicion of 'serious abuse'.

Responding to situations of concern

In responding to reports of abuse, where required, the safeguarding agency should have a role to coordinate the response to the at-risk adult to ensure that it is collaborative, cohesive, and person-centred.

The ALRC recommended that:

Adult safeguarding laws should provide that, where a safeguarding agency has reasonable grounds to conclude that a person is an at-risk adult, the agency may take the following actions, with the adult's consent:

- (a) coordinate legal, medical and other services for the adult;
- (b) meet with relevant government agencies and other bodies and professionals to prepare a plan to stop the abuse and support the adult;
- (c) report the abuse to the police;
- (d) apply for a court order in relation to the person thought to be committing the abuse (for example, a violence intervention order); or
- (e) decide to take no further action.⁵⁹

The following recommendation includes the components described by the ALRC.

Recommendation 7. The adult safeguarding agency (as the Australian Law Reform Commission recommended) should be able to do any of the following in relation to an at-risk adult:

- (a) coordinate legal, medical and other services for the adult;
- (b) meet with relevant government agencies and other bodies and professionals to prepare a plan to stop the abuse and support the adult;

⁵⁷ *Public Guardian Act 2014* (Qld) ss 21-23, 25.

⁵⁸ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 407.

⁵⁹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) pp. 402-403.



- (c) report the abuse to the police;
- (d) apply for a court order in relation to the person thought to be committing the abuse (for example, a violence intervention order); or
- (e) decide to take no further action.

There is an expectation that the agency will develop the kind of service expertise, and crisis responsiveness, that is possessed by the Victorian Intensive Support Team. The Victorian Intensive Support Team has specialist complex support knowledge and crisis capacity and assists people, whether or not they are NDIS participants, to obtain adequate disability service supports.

The proposed adult safeguarding agency would need to develop that kind of specialist crisis support function in order to ensure that the service needs of at-risk adults in crisis are met. Depending on the particular individual's needs, this could involve negotiating for adequate service provision with state or federal agencies (including the National Disability Insurance Agency), as well as with disability, aged care, or health (including mental health) service providers.

Information sharing

Across the consultations, participants noted that information sharing and privacy laws and their often narrow interpretation by various agencies can limit the sharing of information critical to protecting the safety and wellbeing of at-risk adults.

The Public Advocate has conducted a preliminary review of a number of pieces of legislation which include provisions for information sharing. The State and Commonwealth legislation subject to this preliminary review included the:

- *Privacy Act 1988* (Cth)
- *National Disability Insurance Scheme Act 2013* (Cth)
- *Aged Care Act 1997* (Cth)
- *Aged Care Quality and Safety Commission Act 2018* (Cth)
- *Information Privacy Act 2009* (Qld)
- *Guardianship and Administration Act 2000* (Qld)
- *Powers of Attorney Act 1998* (Qld)
- *Public Guardian Act 2014* (Qld)
- *Public Health Act 2005* (Qld)
- *Mental Health Act 2016* (Qld)
- *Forensic Disability Act 2011* (Qld)
- *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)
- *Disability Services Act 2006* (Qld)
- *Domestic and Family Violence Protection Act 2012* (Qld)
- *National Injury Insurance Scheme (Queensland) Act 2016* (Qld)
- *Human Rights Act 2019* (Qld)
- *Hospital and Health Boards Act 2011* (Qld).

There are a number of information sharing provisions in place that do allow information sharing in the context of adult safeguarding. This raises the question of whether the current information sharing laws are being underutilised or whether changes are needed to allow for improved information sharing between various entities.

The development of an adult safeguarding agency should include legislative provisions that allow the agency to specifically receive and share information that is relevant to its functions. However, the broader objective of adult safeguarding may require further changes to create a system of information sharing between all entities that does not discourage proactive and preventative actions to safeguard adults in vulnerable situations.



Providing information to the adult safeguarding agency

As noted, it will be important in any new safeguarding arrangements in Queensland for adequate provision to be made to ensure that individuals and agencies are able to provide confidential information to the adult safeguarding agency.

For example, the *Public Guardian Act 2014* (Qld) gives the Public Guardian broad power to require and receive information in relation to people whose circumstances are being investigated and provides protections for people providing information to the Public Guardian.⁶⁰

Similar provisions in relevant legislation would be required if an adult safeguarding agency was established as an independent commissioner or a departmental unit.

Recommendation 6 of this report outlines the proposed information-gathering powers that the adult safeguarding agency would require to fulfil its functions.

Information sharing powers of the adult safeguarding agency

In addition to enabling individuals and agencies to share information with the adult safeguarding agency, it will also be important to ensure the agency is able to provide information to other agencies to enable a timely and appropriate response to an at-risk adult.

The proposal here would be to provide for enhanced information sharing, drawing on the New South Wales *Ageing and Disability Commissioner Act 2019*,⁶¹ in line with the following recommendation.

Recommendation 8. The adult safeguarding agency should be empowered to provide information to any prescribed agency to enable or assist that agency:

- to provide a service to, or otherwise assist, an at-risk adult; or
- to take action to secure the safety or well-being of an at-risk adult.

If Option B were the preferred adult safeguarding agency model, then section 22 of the *Public Guardian Act 2014* could be revised in this regard. If either of the other models were selected, then a new provision could be added in this regard to the agency's list of powers.

Information sharing powers of prescribed agencies

As noted in Volume One of this report, Information Privacy Principle 11 of the *Information Privacy Act 2009* (Qld) enables disclosure of personal information 'to lessen or prevent a serious threat to the life, health, safety or welfare of an individual' or where 'the disclosure is authorised or required under a law'.⁶²

Rather than seeking to amend Information Privacy Principle 11, a new provision could be inserted, which could be modelled on section 43 of South Australia's *Ageing and Adult Safeguarding Act 1995*. This could enable certain prescribed agencies (such as QCAT, QPS, QAS, and health services, among others) to communicate information to support service providers and other relevant agencies when concerns exist about the well-being of an at-risk adult.

If the Public Guardian were selected as the adult safeguarding agency, this proposed new provision could replace section 24 of the *Public Guardian Act*.

Additionally, rather than providing exceptions to the prohibition on the sharing of information, an improved approach may be to legislatively articulate the potential benefits of sharing information.

⁶⁰ *Public Guardian Act 2014* (Qld) ss 21–25.

⁶¹ *Ageing and Disability Commissioner Act 2019* (NSW) s 14.

⁶² *Information Privacy Act 2009* (Qld) sch 3 11 (1)(c)-(d).



To this end, Queensland's *Youth Justice Act 1992* outlines the purpose of the Act's information sharing provisions as being 'to enable a coordinated response to the needs of children charged with offences'.⁶³ A similar provision could be added to accompany these proposed broader information sharing provisions.

Recommendation 9. Prescribed agencies should be authorised to provide personal information about at-risk adults to other prescribed agencies in circumstances where the provider of the information reasonably believes that the information will assist the recipient:

- to exercise an official function concerning the safety or wellbeing of an at-risk adult; or
- to address a concern about the safety or wellbeing of an at-risk adult that has arisen in the course of the provision of services to the adult.

Supporting structures

It is proposed that the adult safeguarding agency's helpline and investigative teams would be led by an executive team and supported by officers providing appropriate levels of administrative support, as well as a number of additional staff members whose roles would incorporate:

- policy development;
- stakeholder engagement;
- community awareness and education (with a focus on education about the role of the adult safeguarding agency and linking in with broader community responses as and when appropriate); and
- research and analysis.

Systemic advocacy

It is worth noting that the adoption of this report's adult safeguarding recommendations could have implications for the way in which systemic advocacy is undertaken in Queensland in relation to marginalised groups. Both the ADC in New South Wales and the ASU in South Australia currently have systemic advocacy functions.

In Queensland, the Public Advocate is independent of other safeguarding agencies (such as the OPG) and has systemic advocacy functions in relation to 'adults with impaired capacity for a matter'. While not the subject of a recommendation in this report, it may in the future make sense – particularly if the adult safeguarding recommendations in the report are adopted – to gear this office's systemic advocacy around promoting and protecting the rights of at-risk adults. Such a change would need to be accompanied by clear information sharing requirements to enable the office to perform this role. This is something that could be considered in the future.

Adult Safeguarding Networks

The response to reported situations of concern will require a broad suite of possible options. The adult safeguarding agency will be able to address a significant proportion of responses on its own or via direct immediate referral, and there will be a significant proportion that warrant investigation by the agency. In addition, there will also be a proportion of complex social care situations that will benefit from local area discussions between relevant service providers and regulatory agencies.

It will be important to establish a mechanism by which these local area discussions can occur, which, in addition to addressing current situations of concern, will have the additional benefit of building social capital and promoting professional connections and knowledge among local area service professionals about how future complex social care situations may be addressed. This will also provide an opportunity for local campaigns raising awareness of adult safeguarding issues, such as elder abuse, to be developed.

⁶³ *Youth Justice Act 1992* (Qld) s 297B (1).



The roundtables coordinated by this office in the course of preparing this report demonstrated the value of assembling relevant local service providers, advocates, guardianship agencies and first responders to talk about optimal local responses to complex care situations.

There were two noteworthy features of these roundtables that could inform state-wide reforms. The first was that roundtable participants, regardless of their role and background, tended to agree on proposed ways forward for individuals with complex social care needs. When people took the time to discuss with each other individual situations and potential responses, there was notable 'wisdom in the group' that enabled the development of practical potential solutions to situations that are typically considered complex and difficult to address.

Second, participants at the roundtables inevitably learnt a significant amount about the services provided by, and practices of, other participants, even in situations where people had been working in the same geographical location for years.

These benefits of coordinated and structured local area discussions have profound potential for Queensland's adult safeguarding system, and the recommendations of this report seek to harness that potential.

This report calls for the establishment of regional forums, which could be known as Adult Safeguarding Networks. They would see relevant local agencies assembled on a periodic basis (e.g., every two months) to discuss particularly complex social care situations involving at-risk adults in that area or region.

The role of the networks would share some similarities with – though without the regulatory functions of – the Adult Protection Committees that the Public Advocate investigated in Scotland when he undertook his Churchill Fellowship.⁶⁴ The Adult Protection Committees are established by local councils and bring together local professionals including representatives from law enforcement, emergency services, and health and social services, with the aim of coordinating local safeguarding efforts.

There also exist other examples nationally and internationally of community groups that have a role in safeguarding.

For example, in British Columbia, the Association of Community Response Networks provides funding and support to over 80 Community Response Networks, which aim to coordinate community responses and raise awareness of abuse, neglect and self-neglect of vulnerable adults.⁶⁵ These networks bring together local professionals, businesses, government agencies, and community members to enhance relationships between stakeholders to prevent abuse, neglect and self-neglect.

In New South Wales, abuse prevention collaboratives have been established in several local government areas, which bring together local professionals to develop prevention strategies that meet the needs of the local community.⁶⁶ These collaboratives are supported by the ADC.

Within Queensland, the Gold Coast Elder Abuse Response Panel provides another example of a network driving local community responses to elder abuse. The panel includes representatives from a range of organisations and services and seeks to coordinate local responses to cases of elder abuse.

⁶⁴ J. Chesterman, *Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults*, Report for the Winston Churchill Memorial Trust of Australia, 2013.

⁶⁵ British Columbia Association of Community Response Networks, *About us*, <<https://bccrns.ca/about-us>>.

⁶⁶ Evidence to Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Public Hearing 28: Violence against and abuse of people with disability in public places, Brisbane, 13 October 2022, p. 242, (Robert Fitzgerald, New South Wales Ageing and Disability Commissioner).



Drawing on existing models, the development of local networks to build on community services and strengths would complement the establishment of an adult safeguarding agency at a state level.

The benefits of regularly assembling local service and support experts goes beyond information sharing and case conferencing difficult scenarios. This would also build greater local capacity and enable the identification of service gaps.

The proposed place-based Adult Safeguarding Networks also support many of the recommendations made by the Parliamentary 'Inquiry into social isolation and loneliness in Queensland' (the inquiry) report that was tabled in the Queensland Parliament on 6 December 2021.⁶⁷

Should the networks be located in community or neighbourhood centres, it would support recommendation 12 of the inquiry as an initiative supporting the co-location of government services that will increase efficiency and access to services across communities.⁶⁸

The networks would also contribute to the vitality and relevance of neighbourhood and community centres across Queensland, potentially using these centres as a base for operations. The activities of the networks, particularly in relation to community awareness and education initiatives and the development of informal adult safeguards, will increase the profile of positive and proactive initiatives occurring in centres at present, particularly those that build valuable social and intergenerational community connections.

The development of Adult Safeguarding Networks is also strongly aligned with the strategy of the Department of Communities, Housing and the Digital Economy for supported community neighbourhood centres to deliver place-based responses to local issues.⁶⁹

It is also important to note that other current and likely future initiatives both in the domestic and family violence area, and in addressing social isolation and loneliness, utilise the concept of local area forums or networks. While these initiatives have a specific focus, there will be obvious areas of potential overlap with the proposed Adult Safeguarding Networks.

The number of Adult Safeguarding Networks established, and the geographical regions that they would cover, would need to be determined by the Queensland Government. A starting point for considering this matter would be to examine existing geographical boundaries, such as those utilised by hospitals and health services (though it will be important to be cautious of inadvertently viewing adult safeguarding primarily through a medical lens).

In establishing the networks, it will be important to acknowledge the diversity and variation that exists throughout Queensland, both in terms of population characteristics and service availability. While it is anticipated that each network would be able to address and respond to the diverse range of needs within its local area, including adhering to person-centred, trauma-informed and culturally appropriate responses, there may be additional benefits associated with establishing networks to focus on coordinating responses for particular populations, for example people who identify as Aboriginal and/or Torres Strait Islander, who are from culturally and linguistically diverse backgrounds, or who identify as LGBTIQ+.

There will be a range of organisations that could play a network coordinating role, depending on the particular region and population characteristics.

The establishment of local Adult Safeguarding Networks would seek to draw on existing local expertise, with the aim of extending local area service knowledge and social capital. For this

⁶⁷ Community Support and Service Committee, Queensland Parliament, *Inquiry into social isolation and loneliness in Queensland*, report no. 14 (2021).

⁶⁸ Ibid.

⁶⁹ Department of Communities, Housing and Digital Economy, *Strategic Plan 2022-2026: Improve social and economic outcomes* (1 July 2022) <<https://www.chde.qld.gov.au/news-publications/strategies-plans/strategic/social-economic-outcomes>>.



reason, the proposal is that the responsibility for establishing the Adult Safeguarding Networks should not fall on the proposed new adult safeguarding agency. That agency will have an obvious interest and presence in the local Adult Safeguarding Networks, but it would be a lost opportunity, and not the optimal message to the Queensland community generally, for responsibility for this initiative to be included in the remit of the new agency. The message that needs to be given here is that adult safeguarding is everyone's business, not just the business of the proposed new agency.

For this reason, the Queensland Government could oversee the establishment of the proposed Adult Safeguarding Networks via a tender process by which relevant agencies could apply to become the local area Adult Safeguarding Network coordinator. This should be open to a wide array of potential coordinating agencies, in view of the significant variability and diversity that exists in communities throughout Queensland. An Aboriginal health agency may be best placed to perform this role in one community, a local government may be the preferred coordinator in another, and a large service provider may elsewhere be the best option. Mechanisms would, of course, need to be in place where potential conflicts of interest arise, for instance, where the local Adult Safeguarding Network coordinator is also a funded service provider.

Funding for the establishment of local Adult Safeguarding Networks could be relatively modest; at base it would need to cover minor administrative costs (venue bookings) and the salary of a local project officer who would provide administrative and secretariat support for the local Adult Safeguarding Network. Funding may operate on a three-year cycle initially and be subject to further evaluation to ensure that the model is operating effectively. Membership of each regional Adult Safeguarding Network, which would be determined by the coordinating agency, would likely include representation from the new adult safeguarding agency, service providers, emergency services, advocates, community legal centres, health representatives, and regulatory and guardianship agencies. Representation on the Adult Safeguarding Networks should also be sought from people who have lived experience of being 'at-risk'.

The practices of local Adult Safeguarding Networks would need to balance the sometimes-competing rights of at-risk adults both to protection and to privacy. This could potentially be achieved by the use of de-identified local case studies being discussed within the group, with identifying details only discussed among network members who have a direct role in the provision of services to that person.

In local areas where there is insufficient existing expertise or the available local capacity for an Adult Safeguarding Network to be established, the new adult safeguarding agency will need to take extra steps to ensure that its presence and role is communicated to local community members.

Recommendation 10. The Queensland Government should facilitate the establishment of local Adult Safeguarding Networks throughout Queensland, which should be regionally based and which, in large urban areas, could also see networks established in relation to particular groups of people (such as Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities). The networks should consist of local service providers, advocates, relevant health services, emergency services, agencies with regulatory roles and other local area social care experts. The networks should also seek the involvement of people who have experience of being 'at-risk'.

Each Adult Safeguarding Network should have three core roles:

- the consideration of complex social care situations involving at-risk adults in that Network's region;
- the promotion of local-area knowledge and collaboration among Network members; and
- the development and implementation of local awareness raising activities to enhance community knowledge about preventing and responding to adult safeguarding concerns.



Promoting supportive and inclusive communities

Summary of issues raised

Across the consultations, it was clear that participants believe that the community should have an important role in the safeguarding of at-risk adults.

While the establishment of an adult safeguarding agency will address critical gaps in the identification and investigation of adult safeguarding concerns, the safeguarding of at-risk adults is not solely the role of this agency. Rather, it is important that the community also feels able and willing to play a role by identifying situations of potential concern and taking steps to address these concerns where appropriate. For example, this could include speaking to the at-risk adult, supporting the at-risk to take actions to improve their situation, or reporting a situation of concern to the adult safeguarding agency.

Consultation participants noted the importance of place-based safeguarding responses that draw on the strengths and existing resources within communities to address the specific needs of each community.

The Adult Safeguarding Networks described in the previous section of this report provide one mechanism for enabling a place-based approach to preventing the abuse of at-risk adults.

Consultation participants also highlighted the important role of informal safeguards and the protective function of supporting at-risk adults to develop their skills and abilities and strengthen their personal relationships, community connections and participation in the community.

The development of more inclusive communities, enabling greater participation by at-risk adults, will therefore support safeguarding initiatives.

A focus on inclusive communities also aligns with Australia's Disability Strategy 2021-2031, which includes 'inclusive homes and communities' as a key outcome and identifies priority policy areas including having accessible built and natural environments, transport systems, and information and communication systems.⁷⁰

Achievement of this can be supported through a range of factors, however those identified frequently by consultation participants included:

- building community awareness about key issues related to safeguarding,
- ensuring at-risk adults have access to appropriate housing, and
- addressing social isolation and loneliness.

Areas for potential reform

Enhancing community awareness and responses

Consultation participants noted that there was a lack of knowledge about issues affecting at-risk adults such as elder abuse and financial abuse and who to contact about situations of concern, which was impacting peoples' ability to identify and respond appropriately to instances of abuse, neglect or exploitation.

⁷⁰ Department of Social Services, *Australia's Disability Strategy 2021-2031*, Department of Social Services, 2021, p. 9.



The new adult safeguarding agency would be responsible for publicising the role of the agency and increasing awareness about how to contact the agency to report suspected abuse.

However, there is also a need for broader education about key issues, including (but not limited to) elder abuse, financial abuse, and scams, to support people to recognise these issues and learn how to protect themselves and others.

Further community education about legal documents such as Enduring Powers of Attorney and Advance Health Directives could also help to increase the number of people who formally document their wishes and preferences to ensure they are followed, and in the case of Enduring Powers of Attorney, fully understand the powers they are giving to a person. To assist in the prevention of misuse of enduring powers of attorney, those who are agreeing to take on this role may also require more information and education to ensure that they understand the obligations associated with the role, including involving the individual, to the greatest extent possible, in the decisions being made.

There are also opportunities to strengthen the response of mainstream services through education and training, particularly for people in key roles such as healthcare, the police, and banking, all of whom may be well placed to identify and respond to suspected abuse.

Responses can also be enhanced by ensuring that organisations and services have clear pathways for the reporting and escalation of concerns to enable greater consistency.

While state-wide education campaigns on particular topics such as elder abuse should continue to be run by relevant government departments, it is anticipated that the Adult Safeguarding Networks could play a role in community education through developing and implementing local strategies to raise awareness and encourage actions that are suited to the needs and context of the local community.

Inclusive emergency preparedness and responses

As was identified during the COVID-19 pandemic and recent flooding in Queensland, at-risk adults may be especially vulnerable during health emergencies and natural disasters.

There is often limited inclusion and consideration of at-risk adults in emergency plans and planning processes, which has led to gaps in emergency preparedness, responses, and communication with at-risk adults during natural disasters and emergencies.

Responses that consider the long-term impacts and support needs of at-risk adults have also been limited.

Given the impact of the COVID-19 pandemic, bushfires and flooding that has affected Queensland in recent years, there has been significant discussion about how emergency plans and responses could be improved from the perspective of at-risk adults.

In August 2021, the Disability Royal Commission held a public hearing to understand the experiences of people with disability during the ongoing COVID-19 pandemic, and in its report on the public hearing, provided 22 recommendations.⁷¹

In response to the Disability Royal Commission's report, new NDIS Practice Standards were introduced to strengthen guidance to registered NDIS providers around emergency planning.⁷² The new standard requires registered NDIS service providers to have emergency plans in place to mitigate risks to the health, safety and wellbeing of participants in the event of an emergency or disaster and ensure continuity of critical supports. It is also a requirement that there are mechanisms

⁷¹ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing report: Public hearing 5 Experiences of people with disability during the ongoing COVID-19 pandemic* (2020).

⁷² NDIS Quality and Safeguards Commission, *NDIS practice standards and quality indicators*, version 4, 2021.



in place to test and adjust the plans if needed, and that these plans are communicated to the NDIS participant, their workers and their support network.

Under Australia's Disability Strategy 2021-2031, the Emergency Management Targeted Action Plan outlines actions to be undertaken by all levels of government to ensure that disaster and emergency planning processes are more inclusive of people with disability and that management, preparedness and recovery planning processes support the health and wellbeing of people with disability before, during and after emergencies.⁷³ Actions that the Queensland Government has committed to include (but are not limited to):⁷⁴

- responding to relevant recommendations from the Royal Commission into National Natural Disaster Arrangements;
- promoting awareness of and access to resources that facilitate the inclusion of people with disability in planning and assessment processes (e.g., the Disability Inclusive Disaster Risk Reduction Framework and Toolkit); and
- engagement of representatives of people with disability, or mechanisms for engagement, in the Department of Communities, Housing and Digital Economy Human and Social Recovery Groups.

Led by People With Disability Australia and the Queenslanders With Disability Network, an open letter to parties and candidates contesting the 2022 Federal Election from the disability sector acknowledges these recent changes but highlights the need for further action. Recommendations include the development of a National Plan and Roadmap for disability-inclusive disaster preparedness, resilience and recovery, and 'investment for multi-sector targeted responses underpinned by collaborative and inclusive research'.⁷⁵

In August 2020, the Aged Care Royal Commission also held a public hearing into the impact of COVID-19 on aged care, releasing a special report on its findings.⁷⁶ The Commission's report outlines key findings and recommendations for better supporting the safety, health and wellbeing of those receiving aged care services.

To ensure appropriate responses for at-risk adults, it will also be important to explore whether there are gaps in responses for at-risk adults who do not have a disability and are not older adults.

Facilitating timely access to appropriate and affordable housing

A shortage of appropriate, accessible, and affordable housing stock prevents many at-risk adults from living in accommodation that meets their needs and preferences. Difficulty in finding appropriate housing can also create delays and challenges for people returning to the community from other settings such as hospitals or prisons.

Strategies are required to ensure that there is adequate, accessible housing stock available to meet the needs of at-risk adults, that people are supported to access housing that meets their needs, and that sufficient care or support is available to assist people to maintain their housing arrangements.

Social housing

There has been much discussion recently in Queensland about the current housing crisis.

The cost of purchasing a house and rental accommodation in the private sector is now at a point that is, for many people including many at-risk adults, not affordable.

⁷³ Department of Social Services, *Emergency Management Targeted Action Plan*, Department of Social Services, 2021.

⁷⁴ *Ibid.*

⁷⁵ Open letter from Queenslanders with Disability Network and People with Disability Australia, and members of the disability sector to all parties and candidates contesting the Federal Election in 2022, 31 March 2022, p. 2. < <https://qdn.org.au/wp-content/uploads/2022/03/Final-Joint-Open-letter-leave-no-one-behind-310322.doc.pdf>>.

⁷⁶ Commonwealth Royal Commission into Aged Care Quality and Safety, *Aged care and COVID-19: A special report* (2020).



The consequent high demand for social housing cannot be met with the available stock. People also face significant waiting times to access social housing, during which time they may be living in inappropriate housing or at risk of homelessness.

On 20 October 2022, at the Queensland Housing Summit, the Queensland Government announced that the Housing Investment Fund will be increased to \$2 billion, to support the 'commencement of more than 13,000 new homes', with a target of 5,600 new social and affordable homes by June 2027.⁷⁷

The Australian Government will also provide \$350 million over five years for the delivery of 10,000 affordable dwellings and has set an aspiration target of one million new homes under a new national Housing Accord.⁷⁸

As discussed in Volume One of this report, a recent report from the Queensland Audit Office made eight recommendations to improve the management of social housing in Queensland, relating to applications for, and allocation of, social housing.

All of the recommendations were accepted by the Queensland Government, and implementation will support the delivery of housing services and ensure improved access to social housing.⁷⁹

Accessible housing

For at-risk adults who require housing with particular features to meet their accessibility and support needs, finding secure accommodation that meets these requirements can present an additional challenge.

Recent changes to the National Construction Code now require new houses to include accessibility features based on the Livable Housing Design Guidelines Silver Standards, which will help to increase the availability of accessible housing stock.

Enabling minor modification of rental properties was identified as a key issue by a number of stakeholders who participated in the Queensland rental reform consultation in 2018.⁸⁰ Following this consultation, 'The better renting future roadmap' for Queensland identified 'allowing minor modifications around health, safety, security and accessibility' as a priority for reform.⁸¹

This recommendation was not implemented in the first stage of rental reforms due to the complexity of this reform, however discussions between key stakeholders are continuing to determine the best way forward.

Specialist Disability Accommodation

Specialist Disability Accommodation (SDA) is a type of housing available under the NDIS that is designed to meet the needs of people with extreme functional impairments or high-level needs.

Consultation participants described issues with access to SDA, noting that there was a shortage of SDA and often long waiting times for people to be able to access appropriate SDA.

⁷⁷ A. Palaszczuk (Premier and Minister for the Olympics), C. Dick (Treasurer and Minister for Trade and Investment) and L. Enoch (Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts), *Housing Investment Fund boosted to \$2 billion*, media release, State of Queensland, 20 October 2022.

⁷⁸ J. Chalmers (Treasurer) and J. Collins (Minister for Housing, Minister for Homelessness, Minister for Small Business), *National Housing Accord: Working together to help tackle housing challenges*, media release, Australian Government, 25 October 2022.

⁷⁹ L. Enoch (Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts), *Statement from Minister Enoch regarding QAO report on Delivering Social Housing Services*, media release, The State of Queensland, 12 July 2022.

⁸⁰ ARTD Consultants, *Open Doors to renting reform*, Final report for the Queensland Department of Housing and Public Works, 2019.

⁸¹ Queensland Government, *A better renting future reform roadmap*, 2019.



The Queensland Parliament's Health and Environment Committee conducted an 'Inquiry into the provision of primary, allied and private health care, aged care and NDIS care services and its impact on the Queensland public health system'. This inquiry recommended that the Australian Government increase investment in building SDA.⁸²

The Queensland Productivity Commission's report on *The NDIS market in Queensland* also made recommendations to improve the efficiency and capacity of the NDIS market, including that:

The Queensland Government should propose that the NDIA streamline and align specialist disability accommodation (SDA), home modification and supported independent living (SIL) access processes, in order to provide faster access for participants and clearer signals to providers. Participants' eligibility should be determined regardless of their access to a support or the presence of a provider.

Discussions with participants about housing should be elevated in importance and occur early in planning meetings. Application of the 'reasonable and necessary' criterion and reasons for housing support decisions on access should be more clearly explained to promote greater consistency and accountability. Participants with SDA in their plans should be funded at a level that allows a reasonable degree of choice. The NDIA should also report regularly on the timeliness of applications and decisions in relation to housing supports and SIL.⁸³

A recent report by the Public Interest Advocacy Centre and the Housing Hub also explores challenges with current National Disability Insurance Agency (NDIA) decision-making relating to SDA and makes recommendations to improve the transparency and timeliness of these processes and ensure that the NDIS participant's preferences are considered.⁸⁴

Supported accommodation

Issues relating to residential services, including boarding houses, hostels, and supported accommodation were also raised by consultation participants. This included concerns about the funding and quality of some services.

The Public Advocate is currently undertaking a project relating to supported accommodation, which will explore these issues in further detail. The project is due to be completed in 2023.

Social isolation

Social isolation can increase a person's vulnerability to abuse, neglect or exploitation, and can reduce the likelihood that these behaviours will be discovered by others and appropriately addressed.

In response to growing concerns about the prevalence of social isolation and loneliness in the community, the Queensland Parliament's Community Support and Services Committee conducted an 'inquiry into social isolation and loneliness in Queensland' (as noted previously). The committee's final report included 14 recommendations to improve the understanding of, and services to address, these issues, including a recommendation that the Queensland Government develop a 10-year strategy to address social isolation and loneliness.

As part of the response to this inquiry, the Queensland Government announced the \$2.5 million Stay Connected Fund.⁸⁵ This program will provide funding to community organisations for projects that help to build social connections and reduce feelings of social isolation and loneliness. The first year of funding will focus on initiatives to support women aged 55 years and over.

⁸² Health and Environment Committee, Queensland Parliament, *Inquiry into the provision of primary, allied and private health care, aged care and NDIS care services and its impact on the Queensland public health system*, report no. 18 (2022).

⁸³ Queensland Productivity Commission, *The NDIS market in Queensland: Final report*, Queensland Productivity Commission, 2021, p. 303.

⁸⁴ M. Skipsey, D. Winkler, M. Cohen, P. Mulherin, A. Rathbone, and M. Efstathiou, *Housing delayed and denied: NDIA decision-making on specialist disability accommodation*, Public Interest Advocacy and Housing Hub, 2022.

⁸⁵ L Enoch, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts, *New fund to tackle social isolation and loneliness among older women*, media release, 22 August 2022.



The Adult Safeguarding Networks proposed in this report support many of the recommendations made by the Parliamentary inquiry.



Enhancing the responses of other agencies and services

All of the potential adult safeguarding agency models considered in this report would not seek to duplicate existing services, but rather would seek to address 'gaps' in the current safeguarding system and enable referrals to be made to existing agencies as appropriate for services, advocacy, or other supports.

For instance, reports provided to the adult safeguarding agency relating to NDIS service providers or aged care service providers would most likely be referred to the NDIS Quality and Safeguards Commission or the Aged Care Quality and Safety Commission.

Therefore, it is critical to consider opportunities to improve the operation of other agencies and services to improve safeguards for at-risk adults.

Furthermore, as noted in the Public Advocate's Churchill Fellowship report, while identification and investigation of safeguarding concerns are crucial, the adult safeguarding system is only as good as the social services that can be provided to the at-risk adult.⁸⁶

Ensuring access to necessary supports and services that are of high quality and meet the needs of the individual therefore forms an important part of the safeguarding response.

For some people, access to appropriate services will also help to prevent situations of concern by ensuring their needs are appropriately met and affording service staff the opportunity to 'have eyes on the person', enabling early identification of risks and intervention where necessary.

Participants across the consultations identified a range of key agencies and services that play an important role in service provision and safeguarding the rights and wellbeing of at-risk adults.

For many of the agencies and areas identified, there are currently reviews and activities underway which aim to improve systems and services and may help to enhance safeguards for at-risk adults. As such, this report does not attempt to provide a comprehensive guide to reform for each area, but rather aims to highlight some of the key challenges and opportunities to improve the safeguarding responses by these agencies and services, with a particular focus on key issues raised during the consultations held as part of this project.

Advocacy services

Summary of issues raised

Individual advocacy is a critical safeguard for at-risk adults as advocates can support people to navigate complex systems, make complaints and raise concerns, ensure that their rights and wellbeing are protected, and that their preferences are heard. However, the current high demand for advocacy services means that many people are unable to access timely assistance.

Areas for potential reform

Disability advocacy

The National Disability Advocacy Program (NDAP) provides people with disability access to disability advocacy to promote and protect their rights. The advocacy support may be provided

⁸⁶ J. Chesterman, *Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults*, Report for the Winston Churchill Memorial Trust of Australia, 2013.



through a range of models including individual advocacy, citizen advocacy, family advocacy, legal advocacy, self advocacy, and systemic advocacy.⁸⁷

In April 2022, the Australian Government announced an investment of \$100 million over three years to support access to advocacy and legal support for people with disability, including \$73 million in grants for the delivery of the NDAP across Australia.⁸⁸ In Queensland, nine organisations were funded through the NDAP.⁸⁹

The Queensland Disability Advocacy Program also funds the delivery of advocacy, including a referral hub and specialist services, to Queenslanders with disability, their family members and carers.⁹⁰

The Queensland Government provided \$8.1 million over two years from 2019-20 to 2020-21 to fund disability advocacy services. On 23 March 2021, this funding was extended for two further years, with funding distributed via the Queensland Disability Advocacy Program.⁹¹

This program currently funds the Queensland Independent Disability Advocacy Network, launched on 1 April 2022, which is made up of 11 advocacy organisations. A central hub, called Pathways, is operated by Queensland Advocacy for Inclusion, which links people with disability to the most appropriate advocacy service or one of the specialist advocacy services for First Nations people, people from culturally and linguistically diverse backgrounds, and children and younger people with disability.⁹²

Funding for the Queensland Disability Advocacy Program ceases on 30 June 2023.

A key challenge with State and Australian Government funding of disability advocacy services is the short timeframes for funding, which affects the sustainability of advocacy agencies and their ability to plan in the longer term to meet the needs of people requiring advocacy services.

The following recommendations seek to address this issue.

Recommendation 11. The Queensland Government should establish a five-year funding cycle for the Queensland Disability Advocacy Program, with an annual requirement to report on key performance measures.

Recommendation 12. The Queensland Government should advocate for the National Disability Advocacy Program to introduce five-year funding cycles.

The Australian Government recently announced funding for an Alternative Dispute Resolution Pilot for NDIS participants, as well as \$6.6 million to enable participants to access advocacy and legal assistance.⁹³

⁸⁷ Department of Social Services, *National Disability Advocacy Program* (June 2022) <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>>.

⁸⁸ L. Reynolds (Minister for the National Disability Insurance Scheme), *\$100 million to uphold rights of people with disability*, Australian Government, 7 April 2022.

⁸⁹ Department of Social Services, *List of agencies funded under the National Disability Advocacy Program* (June 2022) <<https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-advocacy-program-ndap-operational-guidelines/list-of-agencies-funded-under-the-national-disability-advocacy-program>>.

⁹⁰ Queensland Government, *Advocacy supports* (November 2022) <<https://www.qld.gov.au/disability/legal-and-rights/advocacy>>.

⁹¹ Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, *Queensland Disability Advocacy Program*, Grant program guidelines, 2021.

⁹² C. Crawford (Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships), *\$5.9 million funding boost for disability advocacy support services*, media release, State of Queensland, 1 April 2022.

⁹³ B. Shorten (Minister for the National Disability Insurance Scheme), *Getting the NDIS back on track*, media release, Australian Government, 25 October 2022.



The Public Advocate is also aware of discussions relating to supported decision-making for people receiving NDIS services and that potential referral to independent advocacy services has been considered for NDIS participants who do not have anyone else who can support them to make decisions.

While advocates may be able to support decision-making and are often required to do this within their current roles, it is also important to note that the role of an advocate and supporter for decision-making are different. People often engage with advocates for specific situations or issues, and for the length of time required to address that situation. In contrast, NDIS participants will likely require decision-making supports for multiple decisions and will likely seek to engage with a person over a longer period of time.

As such, if this policy is implemented, training and resourcing would be required to ensure advocacy services are able to meet this need.

Aged care advocacy

In 2021, the Aged Care Royal Commission noted the importance of independent advocacy and made recommendations relating to improving access to advocacy including:

[Recommendation 74i] funding dedicated and individualised advocacy services for younger people who are living in, or at risk of entering, residential aged care⁹⁴

and

Recommendation 106: Enhanced advocacy

1. By 1 July 2022, the Australian Government should, through the implementation unit responsible for implementation of the Royal Commission's recommendations, complete a consultation with the contracted provider of services under the National Aged Care Advocacy Program to determine the extent of unmet demand for prompt advocacy services by people seeking or receiving aged care services. The consultation should also consider the need for:

- a. additional funding for the provision of education and systemic advocacy by the contracted provider of services.
- b. capacity building of advocacy services.

2. In light of the conclusions reached by the implementation unit after that consultation, the Australian Government should increase the funding of the National Aged Care Advocacy Program to establish a sustainable funding base that provides for increased coverage of the program to meet currently unmet demand for prompt advocacy services, including education, and systemic advocacy, as well as the infrastructure required to support an effective national network of advocacy organisations.

3. As an interim measure, by 1 July 2021 the Australian Government should provide additional funding and other supports to enable the development of an effective national advocacy network. To this end, the National Aged Care Advocacy Program should be provided with an immediate funding increase to:

- a. enable a minimum of 5% of older people to access advocacy services
- b. enable advocacy networks to
 - i. provide education;
 - ii. undertake systemic advocacy
- c. support capacity building of the advocacy network through training of formal advocates and the development of clear guidelines and processes to support a nationally consistent advocacy service.⁹⁵

In response to these recommendations, on 1 December 2021, the Australian Government committed to increasing National Aged Care Advocacy Program funding by \$99.6 million, to a total of \$151.1 million over four years.⁹⁶

⁹⁴ Commonwealth Royal Commission into Aged Care Quality and Safety, *Final report: Care, dignity and respect, Volume 1 summary and recommendations* (2021) p. 257.

⁹⁵ *Ibid.*, p. 276.

⁹⁶ R. Colbeck (Minister for Senior Australians and Aged Care Services and Minister for Sport), *National Aged Care Advocacy expanded as reforms gain momentum*, media release, Australian Government, 1 December 2021.



The National Aged Care Advocacy Program currently provides advocacy support for older adults and their carers who are receiving or applying for government subsidised aged care.⁹⁷ The Older Persons Advocacy Network delivers this program across Australia.

Given the ageing population in Australia, the number of people requiring aged care services and related advocacy support is likely to continue to increase.

Continued monitoring of progress in implementing these recommendations and improving access to advocacy services for older adults is required to ensure that advocacy services can meet the growing demand for services.

The National Disability Insurance Scheme

Summary of issues raised

For at-risk adults, access to appropriate support and services is an essential component of safeguarding to protect their safety, rights and wellbeing. This includes appropriate support to assist at-risk adults to participate in the community, maintain their social connections and networks, take steps to protect themselves from abuse, neglect or exploitation, and talk to someone about and report instances of abuse.

Access to the NDIS, which provides funding to eligible people with disability for services and supports based on their individual needs, was discussed frequently across the consultations held as part of this project. The application process was described as complex, confusing, time consuming, and exhausting for people with disability, their families, carers, and supporters. For some, the process of obtaining reports and evidence of their disability to prove their eligibility for the scheme was also costly. The challenges associated with these processes were thought to deter some people from seeking to access the NDIS, leaving them without access to the services they need.

For those who are able to navigate the application process and are deemed eligible for the scheme, accessing appropriate supports and services can also be a challenge. NDIS thin markets, which occur when there is a gap between NDIS participants' needs and the services available locally, and the challenges service providers can face in recruiting and retaining skilled workers were identified as critical issues. Thin markets were of significant concern for people living in rural and remote areas, people with complex needs, Aboriginal and Torres Strait Islander people, and people from culturally and linguistically diverse backgrounds.

Participants across the consultations noted that a coordinated, person-centred approach was critical to the delivery of services to at-risk adults, however service providers tend to operate with a narrow focus, with limited communication and collaboration across services. Additionally, service providers may take a narrow view of their responsibilities, creating uncertainty about which service provider should respond to, or address, particular issues that may arise.

Consultation participants also highlighted issues relating to potential conflicts of interest in situations where an NDIS service provider provides specialist disability accommodation and other supports to an NDIS participant.

It was noted that there can be limited oversight of service providers, particularly unregistered service providers, by the NDIS Quality and Safeguards Commission. This can adversely affect the identification of situations where services are not of an appropriate standard, or where a person is experiencing (or is at risk of experiencing) abuse, neglect, or exploitation.

Improved monitoring, oversight and accountability for service providers, particularly for those supporting at-risk adults, is necessary to ensure that at-risk adults have access to safe, high-quality support and services.

⁹⁷ Department of Health and Aged Care, *National Aged Care Advocacy Program (NACAP)* (March 2022) <<https://www.health.gov.au/initiatives-and-programs/national-aged-care-advocacy-program-nacap>>.



Areas for potential reform

While the introduction of the NDIS has improved access to disability services for many people with disability in Queensland, significant concerns, including but not limited to those described above, have been raised.

The Australian Government has committed to improving the NDIS, including through the recently announced NDIS Review to be led by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM.⁹⁸

Funding has also been announced for:

- the establishment of a Fraud Fusion Taskforce to improve fraud prevention and detection;
- an Alternative Dispute Resolution Pilot;
- funding to enable participants to access advocacy and legal services; and
- an additional 380 permanent NDIA staff, employed to improve delivery of the scheme.⁹⁹

The Australian Government has also committed to actions that will improve safeguards for people with disability under the Safety Targeted Action Plan, as part of Australia's Disability Strategy 2021-2031. This includes undertaking a stocktake of NDIS supports and protections to identify any gaps and opportunities for improvements and actions to 'strengthen the identification and monitoring of NDIS participants at risk of harm to inform safeguarding activities and regulatory action'.¹⁰⁰

The Disability Royal Commission has heard about issues relating to the NDIS and is expected to make recommendations about the quality and safety of services for people with disability in its final report to the Australian Government, due in September 2023.

As there are reviews and discussions underway focusing on this particular area, this report does not seek to cover areas for reform comprehensively but will discuss several key issues relating to safeguarding that were raised across the consultations held as part of this project.

Accessing the NDIS

A number of people, including at-risk adults, may require support to complete an NDIS application.

As part of their role, NDIS Local Area Coordinators are able to help people to understand and access the NDIS, however in practice, the role of Local Area Coordinators has often focused on individual planning for scheme participants.

The Department of Social Services has been undertaking a review of the Information, Linkages and Capacity Building program, of which Local Area Coordinators form a part, so the future of this program and the role that Local Area Coordinators will play in supporting people to access the NDIS in the future is currently unclear.¹⁰¹

As described in Volume One, to support access to the NDIS, the Australian Government provided temporary funding for the operation of Assessment and Referral Teams (ART). Delivered in Queensland by the DSDSATSIP, the ART assisted people with their NDIS applications through the collection and preparation of documents, arrangement of specialised assessments and lodgement of completed forms.¹⁰²

⁹⁸ B. Shorten (Minister for the National Disability Insurance Scheme), *NDIS 2.0: A new hope*, media release, Australian Government, 18 October 2022.

⁹⁹ B. Shorten (Minister for the National Disability Insurance Scheme), *Getting the NDIS back on track*, media release, Australian Government, 25 October 2022.

¹⁰⁰ Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021, p. 6.

¹⁰¹ Department of Social Services, *Information Linkages and Capacity Building (ILC) Program* (16 November 2022) <<https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability/information-linkages-and-capacity-building-ilc-program>>.

¹⁰² C. Crawford (Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships), *Palaszczuk Government's ART-ful boost to NDIS access in Queensland*, media release, The State of Queensland, 19 March 2021.



The Targeted Outreach Program (TOP), led by QDN in partnership with the Queensland Council of Social Service and Aged and Disability Advocacy Australia, supported the operation of the ART program. The TOP provided on the ground networking and identification of people who needed additional support to access the NDIS.

Funding for the ART and TOP, in the forms described above, has now ceased. The Queensland Government has committed to funding the ART program for the 2022-2023 financial year however will limit the program to work with children and young people between the ages of 7 and 25 years.¹⁰³

Given the work of these programs and likely future changes to the NDIS, it will be important to determine if participation in the NDIS is meeting projected rates. This will identify if any participant groups are underrepresented within the scheme, and how targeted strategies and programs can be developed to ensure that people eligible for the NDIS are able to access the support they require.

Workforce and thin markets

The issue of thin markets has been the subject of much discussion, and the focus of a number of previous reports and inquiries including the Joint Standing Committee on the National Disability Insurance Scheme's reports on *Market readiness for provision of services under the NDIS*¹⁰⁴ and *General issues*,¹⁰⁵ the Australian Productivity Commission's report on *National Disability Insurance Scheme (NDIS) Costs*,¹⁰⁶ and the Queensland Productivity Commission's report on *The NDIS Market in Queensland*.¹⁰⁷

Thin markets are a significant concern for people living in rural and remote areas, Aboriginal and Torres Strait Islander people, and people with complex care needs.

In response to this issue, the 'NDIS National Workforce Plan: 2021-2025' outlines 16 initiatives to support the development of the NDIS workforce to ensure it is skilled and responsive.¹⁰⁸

Participant access to services may also be supported by the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2022*, which clarifies that the NDIA may provide funding to 'a person or entity to assist one or more participants to fully access supports'.¹⁰⁹

However, in situations where a suitable service provider is not able to be identified or a service provider withdraws services to a participant, there is currently no provider of last resort to ensure that the participant is able to access necessary supports and services.

There have been numerous calls for the NDIA to develop and release a policy on provider of last resort arrangements.

For example, in 2017, in its report on *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, the Joint Standing Committee on the National Disability Insurance Scheme made the following recommendation:

¹⁰³ C. Crawford (Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships), *Funding to boost NDIS access in Queensland*, media release, The State of Queensland, 30 June 2022.

¹⁰⁴ Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *Market readiness for provision of services under the NDIS* (2018).

¹⁰⁵ Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *General issues* (2020).

¹⁰⁶ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs*, study report, Australian Government, Canberra, 2017.

¹⁰⁷ Queensland Productivity Commission, *The NDIS market in Queensland: Final report*, Queensland Productivity Commission, 2021, p. 303.

¹⁰⁸ Department of Social Services, *NDIS National Workforce Plan: 2021-2025*, Australian Government, 2021.

¹⁰⁹ National Disability Insurance Agency, *2022 NDIS legislation amendments- July update* (30 June 2022) <<https://www.ndis.gov.au/news/7700-ndis-legislation-amendments-2022>>.



[Recommendation 18] The committee recommends the NDIA provides details how it is ensuring a provider of last resort is available for all NDIS participants unable to find a suitable service provider, regardless of their location, circumstances and types of approved supports.¹¹⁰

In a report focused on the rights of adults with cognitive disability (and co-authored by the Public Advocate in his role then as Victoria's Deputy Public Advocate), the Victorian Office of the Public Advocate recommended that:

the NDIA have a transparent and effective 'provider of last resort' system (with a framework established as soon as possible) that ensures:

- provider of last resort mechanisms are established as an ongoing component of the NDIS market
- multiple designated providers of last resort are clearly identified
- providers of last resort are adequately resourced to enable them to respond immediately in situations of market failure
- as soon as possible, participants are transitioned back to support outside provider of last resort arrangements.¹¹¹

This report also calls for the NDIA to develop a clear policy to ensure at-risk adults are able to access the supports they are entitled to under the NDIS.

Recommendation 13. The National Disability Insurance Agency should adopt and publicise a clear policy and associated guidelines surrounding the provision of services to any National Disability Insurance Scheme (NDIS) participant whose wellbeing is at significant risk due to the disability services market's inability to meet the participant's service entitlements.

Recommendation 14. The National Disability Insurance Agency should identify and publicise clear 'emergency contact' information that can be utilised by NDIS participants and their supporters, advocates, and representatives in situations where the absence of adequate service provision is placing the wellbeing of an NDIS participant at significant immediate risk.

The NDIA's Complex Support Pathway and its Exceptionally Complex Support Needs Program were both important initiatives that were designed to address service and market gaps that appeared in the rollout of the NDIS to people with complex support needs.

However, the Exceptionally Complex Support Needs Program, which aimed to support service providers who were working with NDIS participants with complex needs, has now ceased.

Effective support coordination is critical to ensuring timely access to necessary supports and services. Anecdotally, the Public Advocate has heard about good outcomes in situations where specialist support coordination has been provided to people with complex needs.

However, the quality of support coordination provided to NDIS participants can be highly variable.

The following recommendation addresses the need for NDIS participants to have their entitlement to, and provision of, support coordination reviewed to ensure it effectively meets their needs.

Recommendation 15. The National Disability Insurance Agency should ensure that NDIS participants are able to have their entitlement to, and the provision of, funded support coordination reviewed on an urgent basis in situations where the absence of adequate support coordination is placing the well-being of an NDIS participant at significant risk.

¹¹⁰ Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition* (2017) p. 50.

¹¹¹ Office of the Public Advocate Victoria, *Decision time: Activating the rights of adults with cognitive disability*, 2021, p. 38.



Conflicts of interest

Currently, if an NDIS participant is eligible to receive both SDA and Supported Independent Living (SIL) services, funding will be provided separately within their plan. If a single service provider is providing both SDA and SIL for an individual, they are required to have a separate service agreement for each. While the NDIA encourages separation of housing and disability services because of the conflict of interests this can create for service providers, it is not currently a strict requirement under the Scheme.

As noted in Volume One of this report, the NDIS Practice Standards and Quality Indicators state that:

The participant's housing rights, including security of tenure, are upheld, irrespective of any decision/s the participant makes about the provision of other NDIS supports within the specialist disability accommodation dwelling (notwithstanding any matters covered by the specialist disability accommodation service agreement).¹¹²

To address potential conflicts of interest, service providers are required to establish conflict resolution processes to manage issues that arise.

However, across the consultations, participants described a number of situations where NDIS participants had not felt able to freely exercise choice over their service providers for SDA and support services, or had been asked to leave their accommodation if they wanted to change to a different service provider for the other services they received.

The Summer Foundation reports that separation of housing and support services would have a number of benefits, including greater choice and control for participants, improved accountability for service providers, and better responsiveness of services (either housing or support services) to the needs of people with disability or changes in the market.¹¹³

Further separation of housing and support services is required to provide improved outcomes and choice for NDIS participants.

Navigating the disability system

Challenges accessing services and navigating complex systems can prevent at-risk adults from obtaining essential care and support when they need it. This may be due to a lack of awareness within the community about the services available and clear referral points. Navigating the NDIS can also be challenging due to the complexity of the scheme and the sometimes confusing language used in relation to it.

Following the introduction of the NDIS, and under the Information, Linkages and Capacity Building (ILC) program, it was intended that part of the role of the Local Area Coordinators would be to provide people with information about the NDIS, help people to access the NDIS, and help all people with disability (not only NDIS participants) to connect with services, supports and activities in their community.¹¹⁴

However, in practice, the role of Local Area Coordinators has tended to focus on the development and implementation of NDIS plans for NDIS participants, leaving limited support for those needing assistance to navigate the NDIS or disability system more broadly.

In its 'Inquiry into the provision of primary, allied and private health care, aged care and NDIS care services and its impact on the Queensland public health system', the Queensland Parliamentary

¹¹² NDIS Quality and Safeguards Commission, *NDIS Practice Standards and Quality Indicators*, Version 4, 2021, p. 38.

¹¹³ A. Crabb, *Separating Housing and Support Services - A Toolkit for Providers*, Summer Foundation, Melbourne, 2017.

¹¹⁴ National Disability Insurance Agency, *LAC Partners in the Community* (September 2022)

<<https://www.ndis.gov.au/understanding/what-ndis/whos-delivering-ndis/lac-partners-community#role-of-local-area-coordination-lac>>.



Health and Environment Committee recommended the appointment of additional NDIS Nurse Navigators to improve the interface between the NDIS and the public health system.¹¹⁵

It was suggested at the consultations that disability navigators could also be introduced to assist people to navigate the disability sector, particularly those who are not eligible for, or who do not yet have, an NDIS package.

While navigators provide important support and may continue to be required for those most at risk or with complex issues, it remains critical to address the broader issue of overly complex and confusing systems. Simplifying these systems and processes would help to reduce the need for formal navigator support for some people and would help to alleviate the frustration and stress experienced by people with disability, their family, friends and supporters, as they try to understand what is available, and obtain services and supports.

Information, Linkages, and Capacity Building

Across the consultations, participants noted that for people with disability who are not able to access NDIS services, there is limited support available.

It was originally intended that, under the NDIS, people with permanent and significant disability would be able to access individualised support packages, and there would also be supports to enable all people with disability to increase linkages to community-based services through the Information, Linkages and Capacity Building (ILC) program (previously referred to as 'Tier 2' of the NDIS). The ILC was intended to operate at a systemic level, helping to foster social change and contribute to greater inclusion and equity for people with disability.¹¹⁶

The ILC consists of five streams, including:¹¹⁷

1. Information, Linkages and Referrals
2. Capacity building for mainstream services
3. Community awareness and capacity building
4. Individual capacity building
5. Local Area Coordination.

Four of these are delivered through a grants program.

In October 2020, the ILC program was transferred from the NDIA to the Australian Department of Social Services, and it is currently under review.

In 2021, a review conducted by researchers from the Centre for Social Impact at Swinburne University of Technology and funded by the Department of Social Services found that the program was not implemented as was originally intended.¹¹⁸ In particular, community capacity building and linkages were not delivered as intended by Local Area Coordinators. The competitive grant scheme was thought to be a disincentive to collaboration and sharing of learning and the short-term funding offered was not considered to match the nature of the services delivered. This research is intended to inform the development of the next investment strategy for the ILC, which will aim to provide greater support and enable improved outcomes for people with disability, including those who are not eligible for individualised supports through the NDIS.

¹¹⁵ Health and Environment Committee, Queensland Parliament, *Inquiry into the provision of primary, allied and private health care, aged care and NDIS care services and its impact on the Queensland public health system*, report no. 18 (2022).

¹¹⁶ National Disability Insurance Agency, *A Framework for Information, Linkages and Capacity Building*, <https://www.dss.gov.au/sites/default/files/documents/10_2020/ndia-website-ilc-policy-framework.pdf>.

¹¹⁷ Ibid.

¹¹⁸ E. Wilson, J. Qian-Khoo, R. Campaign, C. Brown, J. Kelly & P. Kamstra, *Overview of results: Informing investment design, ILC Research Activity*, Hawthorn: Centre for Social Impact, Swinburne University of Technology, 2021.



Oversight and monitoring

Under the Safety Targeted Action Plan to be implemented as a component of Australia's Disability Strategy 2021-2031, the Australian Government has committed to a review of the NDIS Quality and Safeguarding Framework and to strengthen the identification and monitoring of NDIS participants who are at risk of harm.¹¹⁹

As noted by consultation participants, it will be critical to consider how to improve oversight of NDIS service providers, particularly unregistered service providers, to ensure that at-risk adults are receiving high quality services and support.

National Injury Insurance Scheme Queensland

The National Injury Insurance Scheme Queensland (NIISQ) is a no-fault scheme administered by the National Injury Insurance Agency Queensland (NIISQ Agency) that provides lifetime treatment, care and support for eligible people who have sustained a serious injury as a result of a motor vehicle accident in Queensland on or after 1 July 2016.¹²⁰ Eligible participants enter the scheme as interim participants and receive funding for 'necessary and reasonable treatment, care and support' relating to their injury for two years.¹²¹ Participant needs are reassessed towards the end of that two year period to determine whether they are eligible for lifetime support under the scheme or whether they have recovered sufficiently to be able to exit the scheme.

As of 30 June 2022, the NIISQ has 441 total participants, including 207 interim and 234 lifetime participants.¹²²

The Public Advocate has been made aware that the NIISQ does not appear to have clear processes for the authorisation and use of restrictive practices, or a clear complaints process to enable participants to raise concerns about the services or supports they receive as part of the scheme.

It is understood that the NIISQ Agency is progressing work on the establishment of a quality and safeguarding framework.¹²³ Further reform is required in this area to ensure that the rights and wellbeing of NIISQ participants are better supported.

Aged care

Summary of issues raised

While the consultation feedback often focused on the provision of services and oversight within the disability sector, many of these issues also occur within the aged care sector.

This includes difficulty accessing appropriate care and services in the community, navigating the aged care service system, and challenges with the oversight of services, particularly for those who may be isolated or potentially vulnerable due to other factors.

Areas for potential reform

The recent Aged Care Royal Commission identified a range of issues affecting service access, quality and safety, which impact the wellbeing of older adults.

¹¹⁹ Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021.

¹²⁰ National Injury Insurance Scheme Agency Queensland, *National Injury Insurance Scheme Queensland, overview and eligibility*, Information sheet, n.d.

¹²¹ Ibid.

¹²² National Injury Insurance Scheme, *Cases by status and participant injury*, data set, 2022,

<<https://www.data.qld.gov.au/dataset/national-injury-insurance-scheme-niis-statistics/resource/b110aa9d-bc46-457f-8d7b-b90426ced13a>>.

¹²³ National Injury Insurance Agency, Queensland, *Annual report 2021-2022*, Brisbane, 2022.



While residential aged care was a key focus of the Aged Care Royal Commission, which is outside the scope of this report, it made a number of recommendations that could assist in improving safeguards and promoting the rights and wellbeing of at-risk adults living in the community. This includes recommendations relating to:¹²⁴

- The introduction of a new Aged Care Act that includes key principles and specifies the rights of people seeking and receiving aged care.
- The amendment of the *Quality of Care Principles 2014* (Cth) to enhance regulation of restrictive practices.
- The development of quality indicators for home care.
- The publication of performance information (star ratings) for services and providers.
- Increasing the availability of Home Care Packages.
- Strengthening the monitoring powers of the Aged Care Quality and Safety Commissioner by amending the *Aged Care Quality and Safety Commission Act 2018* (Cth) to include additional statutory functions and powers.
- Improved management of complaints.
- Protection for whistleblowers.
- Expanding the serious incident reporting scheme to include home care.
- A wider range of enforcement powers for the Quality Regulator.
- An independent review of the capabilities of the Aged Care Quality and Safety Commission.

The Aged Care Royal Commission's report also includes a recommendation that the Australian Government should fund 'care finders' who can provide face-to-face support to people needing to navigate the aged care system.¹²⁵

As noted in relation to the disability sector, while the Public Advocate supports the funding of navigators to assist in system navigation, it is also critical to address the underlying issue of systems that are not user-friendly or person-centred. While there may always be a cohort of people who require the support of a navigator, and who should be supported to access relevant services, consideration as to how these systems can be streamlined and simplified to reduce the reliance on navigators is critical for the development of more accessible, person-centred and sustainable systems.

The Australian Government has accepted in full or in principle many of the recommendations noted above and implementation of a number of these is currently underway.¹²⁶

Authorisation and use of restrictive practices

Summary of issues raised

There is an absence of a clear authorisation framework for restrictive practices in community settings where care and support are provided.

Areas for potential reform

As noted in Volume One of this report, in Queensland, the restrictive practices authorisation regime, under the *Disability Services Act 2006* (Qld) and the *Guardianship and Administration Act 2000* (Qld), is complex and can create a degree of uncertainty.

A consent-based model is used, and, depending on the type of restrictive practice and length of time it will be authorised for, decision-makers can include QCAT, the Public Guardian, private guardians appointed to approve restrictive practices, and the Chief Executive of the DSDSATSIP.

¹²⁴ Commonwealth Royal Commission into Aged Care Quality and Safety, *Final Report- Volume 1: Summary and recommendations* (2021).

¹²⁵ *Ibid.*, p. 228.

¹²⁶ Department of Health, *Australian Government response to the Final Report of the Royal Commission into Aged Care Quality and Safety*, 2021.



In addition to state legislation, as part of the NDIS Quality and Safeguarding Framework, there are further national requirements governing the use of restrictive practices on NDIS participants, including monthly reporting to the NDIS Quality and Safeguards Commission.¹²⁷

Work is now underway on simplifying and streamlining the frameworks in operation at a state and territory level, to maintain safeguards and protections as well as increase harmonisation with national regulations.

However, in addition to the uncertainty created by these complex frameworks, there are challenges associated with consent-based models.

The Public Advocate has previously described the challenges associated with consent-based models, including in a reform options paper titled *Improving the regulation of restrictive practices in Queensland: a way forward*¹²⁸ and, more recently, in an article titled *Stopping the inappropriate use of restrictive practices*.¹²⁹

As described in this article:

It is not meaningful to ask a person to consent to their own movement being restricted, for instance, as the only time this authorisation will be used is when the person is seeking to do the very thing they will then be prevented from doing. The fact that a person has agreed, for instance, to be confined to their bedroom – in a modern-day Ulysses pact that could hardly be described as volitional – should not be used as justification for preventing the person from leaving their room.

Even when the restrictive practice is chemical – in the form of a pill – we need to differentiate this from medication since the aim is behaviour modification; not the treatment and amelioration of an illness.

Far more common than the person's own consent, it is substitute consent that will be provided – the consent of another person. And someone who is asked to consent to a restrictive practice being used on a loved one will be in an invidious position. They will rarely have the clinical or behavioural expertise to push back or offer alternative solutions. And inevitably they will fear the consequences for their loved one if they don't go along with the proposal.¹³⁰

Instead, a senior practitioner model could overcome the challenges associated with a consent-based model, and be applied across various settings, not only in the community but also in residential aged care and healthcare settings. This would enable a single process to be established, helping to reduce confusion and uncertainty about the authorisation process.

Recommendation 16. The Queensland Government should adopt a senior practitioner model for the authorisation of restrictive practices that can be utilised across sectors including the disability, aged care, and health sectors.

First responders and crisis responses

Summary of issues raised

Participants in the consultations described the critical role of first responders, such as the QPS and QAS, in safeguarding at-risk adults, noting that the QPS or QAS is often a first point of call for people in the community.

¹²⁷ NDIS Quality and Safeguards Commission, *Behaviour support and restrictive practices*, fact sheet, 2022.

¹²⁸ The Public Advocate (Qld), *Improving the regulation of restrictive practices in Queensland: A way forward, reform options paper*, 5 October 2021.

¹²⁹ J. Chesterman, *Stopping the inappropriate use of restrictive practices*, *Australian Ageing Agenda*, 2022.

¹³⁰ *Ibid.*



In emergency situations, the QPS and QAS are the most appropriate response services for people to call. However, emergency responses for at-risk adults are not always appropriate to meet their needs, and can, in some circumstances, serve to escalate rather than de-escalate situations.

It was also noted that emergency services are often called in non-urgent situations due to a lack of alternative services for people to contact for assistance, especially outside of normal business hours.

Further, in many situations, people are transported to hospital emergency departments, as there are limited alternative places to take them, for example, if they are experiencing a mental health crisis. This was considered a particular challenge as emergency departments can be noisy, bright, crowded, and further contribute to feelings of stress, fear, agitation, and associated behaviours.

Areas for potential reform

As described in the Public Advocate's report titled: *Better pathways: Improving Queensland's delivery of acute mental health services*, QPS and QAS officers receive limited training on mental health and complex disability matters. The report recommends that:

The Queensland Ambulance and Police Services should extend mental health crisis training for first responders to include training on responses for people presenting with a dual disability such as a mental illness and an intellectual disability or cognitive impairment.¹³¹

If implemented, this training would also support more effective responses to at-risk adults who are experiencing high levels of distress or a mental health crisis in the community.

Additionally, training to enable first responders to better understand disability, dementia, and issues that can affect decision-making ability could support improved responses to situations involving at-risk adults.

Under the Safety Targeted Action Plan, as part of Australia's Disability Strategy 2021-2031, the Queensland Government has committed to 'enhance the ability of police to respond to and support the needs of vulnerable people within the community'¹³² including through the delivery of training and awareness raising to frontline police.

Improved knowledge about, and responses to, at-risk adults may also be supported by co-responder programs, which have been trialed and rolled out in some locations in Queensland. Co-responder programs involve mental health clinicians joining QPS and QAS officers to respond to incidents involving mental health concerns. This model enables assessment and referrals to take place within the community, supporting diversion from hospital emergency departments and preventing further escalation of issues.¹³³

Accordingly, the Public Advocate's *Better Pathways* report recommends that:

The Queensland Government should extend the co-responder program, in a format that is appropriate to each particular region, so that it is available to all Queenslanders.

This recommendation is consistent with recommendations 28 and 30 of the Queensland Parliament Mental Health Select Committee's report on its 'Inquiry into the opportunities to improve mental health outcomes for Queenslanders' (June 2022).¹³⁴

In many situations involving at-risk adults, police and ambulance responses may not be appropriate, and alternative service responses are required.

¹³¹ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022, p. 2.

¹³² Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021, p. 26.

¹³³ Metro South Health, *The frontline of defence in mental health crisis care*, news article, 10 December 2020.

¹³⁴ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022, p. 2.



The QPS has a police referral service, which enables at-risk clients to be referred to relevant support providers, including in the areas of community support, domestic violence, family and youth support, health and wellbeing, homelessness, identity theft and fraud, legal assistance, mental health, seniors, and victim support.¹³⁵

Community-based services are also required to provide an alternative to attending hospital emergency departments. In particular, consultation participants noted an absence of alternative services for adults.

Relevant recommendations from the Public Advocate's *Better Pathways* report include that:

Queensland Health should extend Acute Care Teams to deliver 24-hour outreach services in the community, providing short-term clinical crisis interventions and onward referral to people experiencing a mental health crisis.¹³⁶

and

The Queensland Government should extend Queensland Health's Crisis Support Spaces program to provide:

- a. a 7 day a week service, with opening hours consistent with peak periods for mental health presentations at hospital emergency departments;
- b. referral via General Practitioners, the Queensland Ambulance Service or patient self-presentation;
- c. home-like, safe, and calming environments to enhance the patient care experience; and
- d. best practice crisis and stabilisation services, delivered by a combined peer lived experience and clinical workforce.

This recommendation is consistent with recommendations 29 and 30 of the Queensland Parliament Mental Health Select Committee's report on its 'Inquiry into the opportunities to improve mental health outcomes for Queenslanders' (June 2022).¹³⁷

Implementation of these recommendations would also support improved safeguards for at-risk adults.

Guardianship and administration

Summary of issues raised

In many situations, to protect an at-risk adult, the safeguarding response employed is the assessment of decision-making capacity and consequent appointment of a substitute decision-maker.

Consultation participants reported an increase in the appointment of guardians, including the Public Guardian, for issues relating to accessing the NDIS.

Participants attributed some of this increase to a lack of understanding within the community about decision-making ability and the appointment of substitute decision-makers, which can lead to the exclusion of at-risk adults from decision-making. In situations where a private guardian or administrator is appointed (i.e., not the Public Guardian or Public Trustee), a lack of understanding about decision-making, the role of decision-makers, and assessment of decision-making ability can lead to decisions being made for, instead of with, adults with impaired decision-making ability.

Across the consultations, participants highlighted the importance of using a least restrictive approach, encouraging supported-decision-making to the greatest extent possible and avoiding the use of substitute decision-making wherever possible. This included enabling 'dignity of risk',

¹³⁵ The State of Queensland (Queensland Police Service), *Police referrals* (October 2021) <<https://www.police.qld.gov.au/police-and-the-community/police-referrals>>.

¹³⁶ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022, p. 2.

¹³⁷ *Ibid.*



where people are able to make decisions that others may not agree with or may believe are 'poor' decisions.

Areas for potential reform

Queensland's guardianship legislation will warrant revision following the release in 2023 of the final report from the Disability Royal Commission. The Disability Royal Commission has held two policy roundtables relating to guardianship and supported decision-making,¹³⁸ and a public hearing in November 2022 focussed on people with lived experience of the guardianship system. Among other things, the Disability Royal Commission has been exploring ways to promote supported decision-making alternatives to adult guardianship appointments.

Such reforms are consistent with modern human rights developments, which are seeking to identify alternatives wherever possible to the appointment of substitute decision-makers such as guardians and administrators.

These developments are relevant to this report as an application for a guardianship order is one adult safeguarding mechanism that is frequently used. It is important that this mechanism is used less often than it currently is, and only as a last resort, when there are no other feasible alternatives.

With that in mind, Queensland's guardianship legislation should be amended to clarify specifically that any less restrictive alternatives to a guardianship appointment need to be exhausted before an appointment is made, and to ensure that any appointment of a substitute decision-maker is actually needed at the time of the order (rather than being potentially needed at some future point).

The following recommendation seeks to achieve this change.

Recommendation 17. Queensland's guardianship legislation should be revised to include the following in the criteria for the appointment of a guardian or administrator:

- the relevant adult is unable, even with support that is available to them, to make the relevant decision;
- there is no other viable less restrictive alternative than the appointment; and
- without the appointment the adult's immediate welfare would be at risk.

It could be argued that these criteria are already included within the *Guardianship and Administration Act 2000* (Qld) (the Act) or reflect the current practice of QCAT in the appointment of guardians and/or administrators.

For example, for the first of these criteria, that the adult is unable to make the relevant decision even with support, it could be argued that this already reflects the current practice of QCAT and general principle 10 under the Act regarding the use of structured decision-making.

For the subsequent two criteria, it may also be considered that these are already included within the Act. For example, under principle 9:

A person or other entity, in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for an adult on an informal basis, must do so —
(a) in a way that promotes and safeguards the adult's rights, interests and opportunities; and
(b) in the way that is least restrictive of the adult's rights, interests and opportunities.¹³⁹

¹³⁸ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Roundtable-Supported decision-making and guardianship: Summary report* (2022).

¹³⁹ *Guardianship and Administration Act 2000* (Qld) s 11B(3)9.



The Act also requires that for the appointment of guardians and/or administrators QCAT must be satisfied that:

there is a need for a decision in relation to the matter or the adult is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property.¹⁴⁰

It should be noted that this, unlike the recommended criteria above, does not include a focus on risk to 'immediate' welfare.

Overall, while aspects of these proposed criteria may be contained within the Act, their inclusion in the legislation as recommended would provide greater clarity around how the Act should be applied, to ensure that the least restrictive approach is implemented at all times.

Implementation of this recommendation would have implications for the operations of the QCAT registry. Indeed, a strong case can be made that resources ought to be devoted to enable QCAT registry staff members to increase their level of engagement when individuals and agencies lodge guardianship applications, to ensure that no less restrictive alternatives exist to the appointments that are being sought. The provision of such resources is likely to be very cost effective in ultimately decreasing the number of adult guardianship hearings and orders.

To support greater adoption of supported decision-making, the NDIA has also undertaken consultations to inform the development of a new supported decision-making policy for NDIS participants.

Community visitors

Summary of issues raised

Across the consultations, participants noted the importance of oversight and monitoring of at-risk adults who may have a single service provider or carer, and the risk associated with social isolation for adults with care and support needs living in the community.

Areas for potential reform

In Queensland, the OPG provides the Community Visitor Program, in which community visitors independently monitor particular types of accommodation where vulnerable adults live, called 'visitable sites'.

Visitable sites include:

- (a) an authorised mental health service under the Mental Health Act 2016 that provides inpatient services; or
- (b) the forensic disability service; or
- (c) premises, other than a private dwelling house, at which a funded adult participant lives and receives services or supports that —
 - (i) are paid for wholly or partly from funding under the national disability insurance scheme; and
 - (ii) are provided under the adult's participant's plan; and
 - (iii) are provided by a registered NDIS provider that is registered under the National Disability Insurance Scheme Act 2013 (Cwlth), section 73E to provide a relevant class of supports; and
 - (iv) are within the relevant class of supports; or
- (d) a place, other than a private dwelling house, that is prescribed under a regulation.¹⁴¹

¹⁴⁰ *Guardianship and Administration Act 2000* (Qld) s 12(1)(b).

¹⁴¹ *Public Guardian Act 2014* (Qld) s 39.



Community visitors can make announced or unannounced visits, and enquiries into:

- (a) the adequacy of services for the assessment, treatment and support of consumers at the visitable site; and
- (b) the appropriateness and standard of services for the accommodation, health and wellbeing of consumers at the site; and
- (c) the extent to which consumers at the site receive services in the way least restrictive of their rights; and
- (d) the adequacy of information given to consumers at the site about their rights; and
- (e) the accessibility and effectiveness of procedures for complaints about services for consumers at the site; and
- (f) at the request of the public guardian, another matter about the visitable site or consumers at the site.¹⁴²

Community visitors can lodge complaints for, or on behalf of, adults residing at those sites, and can refer unresolved complaints to other agencies as appropriate.

There have been calls for 'a national community visitor scheme' to be established to monitor the situation of NDIS participants (see, for example, the Joint Standing Committee on the National Disability Insurance Scheme report on the *NDIS Quality and Safeguards Commission*).¹⁴³

Under the Safety Targeted Action Plan, as part of Australia's Disability Strategy 2021-2031, the Australian Government will look to have 'an agreed approach to community visiting as part of the NDIS Quality and Safeguards Framework by 2022'¹⁴⁴ to contribute to the objective of strengthening the design of government service systems.

Such a scheme could also conceivably cover aged care service recipients. Within the aged care sector, while there is a national Community Visitors Scheme currently in operation, this scheme involves volunteers who provide friendship and companionship with the aim of helping to address social isolation and loneliness.¹⁴⁵ These visitors do not have a role in monitoring service standards or providing safeguards.

Any move to establish a national monitoring scheme for aged care and NDIS service recipients – which would be welcome – would require federal funding support.

This report does not go so far as to make recommendations concerning a scheme for visiting at-risk adults, many of whom live in private accommodation settings.

However, a comprehensive external review of Queensland's Community Visitor Program may be required in the future, particularly in the context of the national developments noted above.

Elder abuse laws

There have been some calls to respond to the increasing prevalence of elder abuse in the community by amending current laws to create specific offences for elder abuse.

In April 2021, in the Australian Capital Territory (ACT), the *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT) introduced new laws to protect vulnerable adults.

The changes introduce offences relating to the abuse of a vulnerable person, failure to protect a vulnerable person from a criminal offence, and neglect of a vulnerable person.¹⁴⁶

¹⁴² *Public Guardian Act 2014* (Qld) s 41(2).

¹⁴³ Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *NDIS Quality and Safeguards Commission* (2021).

¹⁴⁴ Department of Social Services, *Safety Targeted Action Plan*, Department of Social Services, Canberra, 2021, p. 9.

¹⁴⁵ Department of Health, *Community Visitors Scheme National Guidelines*, Australian Government, 2019.

¹⁴⁶ *Crimes Act 1900* (ACT) ss 36A – 36C as amended by *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT) s 5.



Under this legislation, a vulnerable person includes adults with disability or adults aged 60 years and over who also meet additional vulnerability criteria.¹⁴⁷

In its report on elder abuse, the ALRC did not recommend the introduction of specific elder abuse offences, instead noting that 'existing criminal laws generally adequately cover conduct which constitutes elder abuse'.¹⁴⁸

While the introduction of new laws could assist in highlighting the seriousness of these issues to support a reduction in elder abuse, existing laws in Queensland already apply to many types of elder abuse. The Public Advocate and the Queensland Law Society previously released the *Elder Abuse: Joint Issues Paper* in 2022, which details the framework for criminal justice responses to elder abuse in Queensland.¹⁴⁹

As such, the problem is not so much the absence of specific laws, but rather the under-utilisation of existing laws. Therefore, it makes sense to focus reform activity on: increasing the reporting of instances of elder abuse; better enforcement of existing laws; and ensuring appropriate responses to instances of elder abuse.

There are also concerns that the introduction of different laws for older adults who experience abuse, rather than utilisation of general laws, would be inherently discriminatory, and that such laws could, albeit unintentionally, dissuade people from taking on carer roles.

This report does not recommend the enactment of new elder abuse laws, however the impact of the recent legislative changes in the ACT could provide further information on whether the introduction of similar laws could be beneficial in Queensland.

The establishment of the safeguarding agency proposed in this report, and improved responses from emergency services such as the police, would significantly reform responses to elder abuse in Queensland.

¹⁴⁷ *Crimes Act 1900 (ACT) 33 (5)* as amended by *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020 (ACT) s 8*.

¹⁴⁸ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC report 131 (2017) p. 363.

¹⁴⁹ The Public Advocate (Qld) and Queensland Law Society, *Elder Abuse: Joint Issues Paper*, Brisbane, 2022.



Conclusion

In Queensland, the adult safeguarding system is fragmented and does not adequately address the needs of at-risk adults.

Following on from Volume One, which describes the safeguarding concerns noted by participants in consultations held across Queensland, this volume makes recommendations to improve the way that Queensland safeguards the wellbeing of at-risk adults.

The central recommendation of this report is that a new adult safeguarding agency be established, ideally in the form of an Adult Safeguarding Commissioner. The Commissioner's office would be a central point of contact for people with concerns about the abuse, neglect, or exploitation of at-risk adults (or potential abuse, neglect, or exploitation), and would be empowered to investigate these reports and provide supportive interventions to ensure the safety and wellbeing of at-risk adults.

This volume also explores opportunities to engage members of the general public more often in adult safeguarding to assist in providing place-based responses to situations of concern. This volume also provides recommendations to enhance the responses of existing agencies and services, in the disability, aged care, guardianship and administration, and advocacy sectors.

The implementation of the recommendations in this report will help to ensure that the rights, safety, and wellbeing of at-risk adults are better protected in Queensland.

Adoption of this report's recommendations may also help to reduce pressure on Queensland's emergency services, health services, and guardianship systems, which are often relied upon due to a lack of more suitable, alternative responses.

Importantly, the approach described in this report would also institute a signature paradigm shift; away from a safeguarding response that is reactive, relying too heavily on the assessment of decision-making capacity, and overusing adult guardianship, to one that focuses on prevention and supportive interventions, and better emphasises the protection and promotion of human rights.

