Office of the Public Advocate
Queensland Government

Annual Report 2005-2006

Office of the Public Advocate

Queensland

17 October 2006

The Honourable Linda Lavarch MP
Attorney-General and Minister for Justice and Women
State Law Building
50 Ann Street
BRISBANE QLD 4000

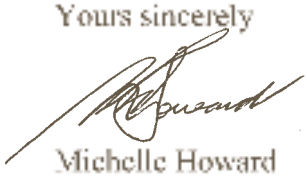
Dear Attorney,

I am pleased to present the Annual Report on the performance of the Public Advocate's functions for the financial year ended 30 June 2006. This is my first Annual Report as Public Advocate.

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

The report provides information on the key activities of the Office of the Public Advocate for 2005-06 and a statement of our financial and operational functions for the year.

Yours sincerely



Michelle Howard
Public Advocate – Queensland

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The Public Advocate's Retrospective on 2005-06

On 1 February 2006, I was appointed as Queensland's second Public Advocate. I commenced work in the Office on 9 February 2006.

It is appropriate that I begin my review by acknowledging the enormous contribution made by Ian Boardman as Queensland's first Public Advocate, having served in the role from 2000 until my recent appointment.

Recently, it was suggested to me that my Office is like a grain of sand in the oyster. The analogy has some appeal. In effect, the role of the Public Advocate is to raise difficult issues in the interests of adults with impaired decision-making capacity with a range of stakeholders and, having raised these issues, to maintain some level of 'irritation'. Over time the pearl will emerge, a symbol of the oyster's ability to transform this aggravation into something valuable. In context, the transformation sought is visionary systems reform which serves the interests of adults with impaired decision-making capacity.

"The Public Advocate is like a grain of sand in the oyster"

A Period of Significant Change

During the period of my incumbency, the Office has experienced a very busy time, and has been active on a range of systemic issues. I extend my thanks and appreciation to the many people –adults with impaired capacity, family members, advocates, and representatives of government and non-government organisations – who have approached my Office to work openly and collaboratively on these issues, towards systems improvement.

The review of the guardianship regime was announced in late 2005. This regime, which created the Office of the Public Advocate, is integral to the lives of adults with impaired capacity. It provides for a regime of decision-making by and for the adults which protects their rights and interests. At the time of writing, the Queensland Law Reform Commission had recently issued a discussion paper in relation to the first phase of this review, on issues of confidentiality. My Office has already made numerous contributions to the development of this paper, as a member of the Guardianship Review Reference Group.

In late April 2006, work was commissioned by the Queensland Government to formulate legislative and service options for adults with intellectual or cognitive disability and seriously 'challenging behaviour'. From late May 2006, aspects of the *Mental Health Act 2000* relating to forensic patients and victims of crime and their families have been under formal review. Further, the new *Disability Services Act 2006* came into effect as of 1 July 2006, and the new *Corrective Services Act 2006* on 28 August 2006. In short, many key pieces of legislation that impact on people with impaired capacity are currently under review, or have recently been significantly amended.

With respect to policy development and service delivery, a similar state of activity exists. The Accommodation Support & Respite Services Directorate of Disability Services Queensland was reviewed by Mr John Ford, and a report delivered in late 2005. Implementation of its recommendations is underway. At a national level, fundamental reform to funding and service delivery in the mental health system has been adopted. A number of significant reports and recommendations have been handed down over the last year in relation to the health and mental health systems, including the report of the Senate Select Committee on Mental Health. The Davies and Forster reviews of the health system concluded during 2005-06, and have sparked significant changes in systems of support for adult Queenslanders with a decision-making disability. Publicised reports of sexual abuse of elderly residents in residential aged care have sparked renewed activity on reforms aimed at prevention of elder abuse. In addition, the Department of Justice and Attorney-General has commenced a number of noteworthy initiatives for people with impaired capacity. In particular, court diversion programs for adults who are homeless and have special circumstances merit acknowledgement. For younger people inappropriately placed in aged care facilities, work is currently underway to provide better options for their future support and accommodation.

In late 2005, the Human Services Chief Executive Officer's (CEO) Sub-Committee on Disability was established by the Honourable Peter Beattie MP Premier of Queensland. The Reference Group on Disability was formed as an advisory body to this Sub-Committee. This group, intended to inform the work of the Sub-Committee, replaces the Framework Implementation Committee under the Government's previous Strategic Framework for Disability 2000-05. The new Reference Group on Disability met for the first time in late April 2006.

Public Advocate Michelle Howard

In addition, since my commencement in the position, some significant opportunities have arisen for the Public Advocate's intervention in legal proceedings. I have been granted leave to intervene in proceedings in the Guardianship and Administration Tribunal, and several coronial inquests. In each case, the individual matters relate directly to issues of considerable systemic significance to adults with impaired capacity.

These are but a few of the issues around which advocacy has been undertaken over recent months. At this point in time, it is difficult to assess the overall importance and impact of all of these changes. Some carry with them the potential for obvious and significant improvements in the lives of people with impaired capacity. With others, the long-term implications are unclear or potentially adverse. With many, it is too soon to tell. What cannot be denied is a heightened level of activity on issues concerning people with impaired capacity, and a greater awareness of their presence, needs and rights.

In summary, the current period is one of significant activity in legislative, policy and service reform. However, activity does not necessarily equate with progress: the touchstone for success is real and substantial improvement in the quality of life for the adults concerned, and their greater protection from abuse and neglect.

The Annual Report

This Annual Report takes a different format than those in previous years. Whereas the Annual Report previously has been a major advocacy vehicle, providing critique and new recommendations, this Report will focus on reporting the work and advocacy performed by the Office of the Public Advocate during the 2005-06 period. There are several reasons for this approach.

First, it is intended for the Public Advocate's Discussion and Issues Papers to be major advocacy vehicles on issues which may otherwise have been reported more fully in the Annual Report. As such, I intend to issue several Papers in the next financial year. These will be detailed documents, based on research and intended to inform and contribute to ongoing legislative, policy and service delivery reform.

Second, critique and recommendations on particular issues and projects are otherwise contained in written submissions made by the Office throughout the course of the year. The substance of these submissions will be briefly reported in this Annual Report.

Third, I am considering issuing an Annual Review for wider public circulation in 2007, which will contain broader discussion and recommendations. It is hoped that this document will be accessible to a range of audiences including the adults and their support networks. However, due to the Office's work plan, and the current volume of work on core business, the timing of the Annual Review is uncertain.

I have endeavoured conscientiously to report on all the work of the Office throughout the 2005-06 year, but this has not been without its challenges. During 2005-06, I was in the role of Public Advocate for a little over four and a half months, and there had been some staff turnover within my team of three Senior Research Officers during the year. Also, reporting on the work of the Office of the Public Advocate is not a simple task. The business of the Public Advocate would not be accurately or meaningfully reported by simply counting the number of submissions made, or meetings attended. Advocacy around an issue may occur in a variety of formal and informal ways. Not every issue which is reported to the Office as a concern by interested parties can reasonably be explored in detail or taken up by the Office, so it would be unhelpful to provide statistics about inquiries or referrals. In any event, serious systemic issues are sometimes discovered through research and dialogue, or as a result of knowledge of a service or legislative shortcoming, rather than a referral as such.

These issues aside, I have sought to provide a meaningful report which accurately records systemic issues identified, and documents the advocacy which has occurred in respect of them.

Strategic Planning 2006-08

I come from a different background from that of the previous Public Advocate. My approach to the role is no doubt quite different. The legislative scheme easily accommodates these differences, giving little guidance as to how the role should be performed.

Upon commencement as Public Advocate in February 2006, one of the priorities for me was to undertake strategic planning to set the future direction for the Office. The Public Advocate has few staff to support the performance of wide-ranging statutory functions. There are three Senior Research Officers. In addition, there is one Administration Officer, who is sometimes supported by part-time and temporary administrative support. Accordingly, for our advocacy to have meaningful impact, priority areas and advocacy strategies around those issues must be carefully and strategically chosen.

My staff and I, with input from the Public Advocate's Reference Group (consisting of key government and non-government stakeholders), developed a Strategic Plan and a Business Plan for the period 2006-08. The Strategic Plan appears at Appendix 2. The Business Plan is not reproduced in this report but is available online. It identifies six major areas for proactive advocacy over the period of the plan.

The areas of priority are:

- The guardianship review
- Services and support for adults with complex needs
- People with impaired capacity in the criminal justice system
- Mental health reform
- The ageing of people with a disability
- The hidden and unmet healthcare needs of people with impaired capacity.

Of course, despite the best laid plans, other issues will inevitably arise during the period of the plan which are deserving of priority, because of their seriousness or to take advantage of current interest. A scan of the activity within the last few months referred to earlier reinforces this contention. Already, this has occurred during the currency of the plan: for example, the work with respect to 'challenging behaviour' and the review of the *Mental Health Act 2000* were announced late April and late May respectively. Both are of such significance to the people for whom the Office advocates, that I consider providing input into them as essential, and part of our core business. Accordingly, there must be flexibility and capacity in our plans to accommodate such issues as they arise, despite not being anticipated at the time the Strategic Plan was finalised. In any event, although the reviews referred to were not anticipated in the planning process, both fall squarely within our identified priority areas.

In addition to proactive and reactive advocacy, the Public Advocate has an ongoing statutory monitoring role over the delivery of services and facilities to the adults. As potentially almost every business, community organisation, and government department provides services and/or facilities for adults with impaired capacity, this is an enormous task. All that can be done is monitoring on an ad hoc basis with emphasis on specialist disability services and facilities, and more generalist services which are brought or come to our attention from time to time.

Expression of Appreciation for the Staff of the Office of the Public Advocate

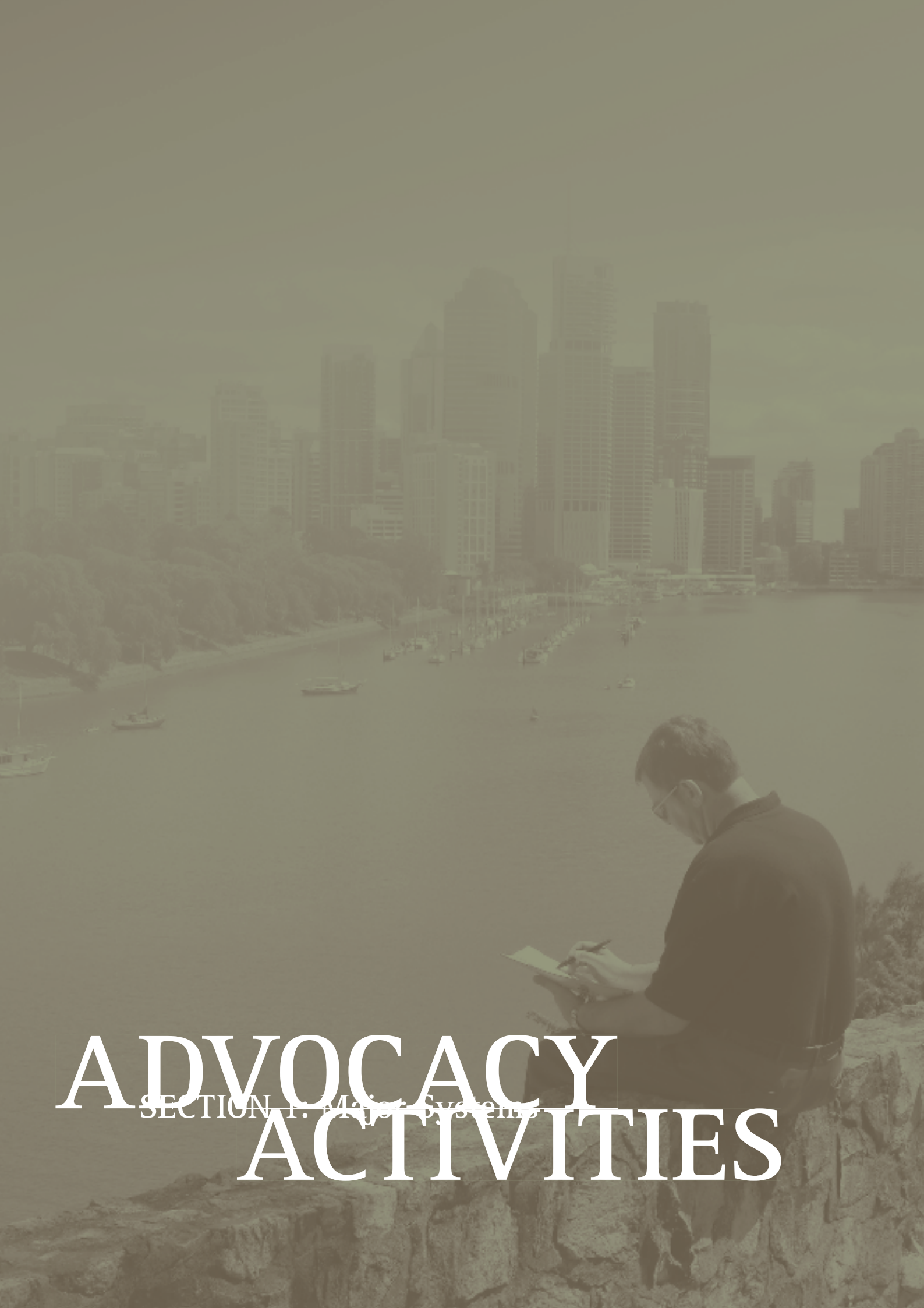
It is implicit in my preceding comments, that a large volume of advocacy, across a broad range of issues, in a variety of formats (verbal and written) is achieved by the Public Advocate. I wish to acknowledge the hard work and dedication of each member of my team and express my heartfelt thanks for their efforts. Each person brings a broad range of experience and knowledge to their role. The various individual talents combine to create an impressive array of strengths within the Office. Hopefully, this strength converts to real and tangible benefits resulting in improvements in the quality of life for adults with impaired decision-making capacity, and the protection of the rights and interests of those adults.

The Final Word...

Finally, I return to the grain of sand in the oyster.

To its credit, the Queensland Government passed legislation creating the Public Advocate, on the recommendation of the Queensland Law Reform Commission. A Government-appointed, stand-alone systems advocate was a new concept and, currently, does not exist in any other Australian jurisdiction. To my mind, this represents an important acknowledgment by Government of its commitment to positive systems change for adults with impaired decision-making capacity. In effect, Government deliberately placed the grain of sand in the oyster. Although the Public Advocate may at times represent an irritation to the oyster, we must not lose sight of our mutual aim: to create those pearls of transformational change, which will effect real and substantial improvements in the lives of the adults.

Public Advocate



ADVOCACY ACTIVITIES

SECTION I: Major Systems

SECTIONS ONE, TWO & THREE report on the advocacy activities of the Office for 2005-06. Advocacy is conducted in accordance with the Public Advocate's statutory functions and powers in the *Guardianship and Administration Act 2000*.

209 Functions – systemic advocacy

The public advocate has the following functions –

(a) promoting and protecting the rights of adults with impaired capacity for a matter;

(b) promoting the protection of the adults from neglect, exploitation or abuse;

(c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;

(d) promoting the provision of services and facilities for the adults;

(e) monitoring and reviewing the delivery of services and facilities to the adults.

210 Powers

(1) The public advocate may do all things necessary or convenient to be done to perform the public advocate's functions.

(2) The public advocate may intervene in a proceeding before a court or tribunal, or in an official inquiry, involving protection of the rights or interests of adults with impaired capacity for a matter.

(3) However, intervention requires the leave of the court, tribunal or person in charge of the inquiry and is subject to the terms imposed by the court, tribunal or person in charge of the inquiry.

1. The Guardianship System

1.1 Review of the guardianship legislative regime

The guardianship regime comprises the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. It is an important legislative system in its impact on the lives of adults with impaired decision-making capacity. The regime establishes a system for decision-making by and for adults with impaired decision-making capacity, while protecting their rights and interests. The regime is underpinned by principles including recognition of the adults' human rights, respect for their human worth and dignity, the principle of exercising power in the manner least restrictive of adults' rights, and the principle of substituted judgment. However, decisions made must be consistent with an adult's proper care and protection. The guardianship regime also provides for the establishment of the Public Advocate, the Guardianship and Administration Tribunal, the Adult Guardian, and the Community Visitor Program. It defines the functions of each of these entities within the regime. It recognises the Public Trustee as a possible administrator. Accordingly, it is a very significant legislative system for the adults.

Community groups, and in particular an alliance of community-based organisations, known as the Guardianship and Administration Reform Drivers (GARD), have publicly raised concerns about Queensland's guardianship regime.

In October 2005, the Attorney-General and Minister for Justice referred the guardianship legislation to the Queensland Law Reform Commission (QLRC) for review. The review is being conducted in three parts:

1 the confidentiality provisions of the guardianship laws

2 the General Principles of the guardianship regime (which guide decision-making)

3 Queensland's guardianship laws more generally.

Accordingly, the review focuses on legislative reform, not on the operation of the guardianship regime.

The QLRC released a discussion paper in relation to the first part, *Confidentiality in the Guardianship System: Public Justice, Private Lives*[1] on 9 August 2006. A companion paper containing a brief guide to the issues,[2] pamphlets[3] outlining the key questions and an interactive CD-ROM[4] are also available, making participation in the review accessible for a wide group within the community.

This Office has participated as a member of the Guardianship Review Reference Group, and has contributed to the development of the discussion paper, which is available for public comment until 31 October 2006. Input through the Reference Group has not involved submissions on the substance of the issues raised. The Office now intends to develop a comprehensive submission in response to the substantive issues raised in the Discussion Paper.

Involvement in the later parts of the review will continue through the Reference Group and formal submissions to the QLRC as each stage progresses. The Public Advocate commends the Queensland Government for initiating this review, and looks forward to the further enhancement of the guardianship regime in Queensland.

1.2 The Community Visitor Program

Over recent months, a closer working relationship has developed between the Office of the Public Advocate and the Community Visitor Program (CVP). Development of a new protocol is underway. This will provide for the exchange of information of a systems nature. There is enormous potential for mutual benefit to each Office, and to adults with impaired decision-making capacity. There is the potential for collaboration on specific projects. For example, an informal partnership has been created to examine the unmet (physical) healthcare needs of adults with impaired capacity. (Refer to section 10.1 of this report).

Community visitors regularly attend many visitable sites[5] which house adults with impaired decision-making capacity, or an intellectual or mental impairment.[6] These sites include authorised inpatient mental health services, services operated or funded by Disability Services Queensland or Queensland Health, and Level 3 private residential services (supported accommodation hostels).[7] Visitors' functions are to inquire into the adequacy and standard of services provided; to inquire into and, if possible, resolve complaints; and to make referrals to appropriate agencies. Following a site visit, a community visitor must prepare a report on the visit, a copy of which can be furnished to appropriate stakeholders, including the Public Advocate. Information gathered and collated through the CVP has the capacity to identify systems trends and issues within visitable sites.

A new CVP database was created in April 2006. This provides additional capacity for the collection of trend data, by enabling scrutiny of issues raised with, or identified by, community visitors in relation to each of their legislative functions. For example, information will be available with respect to the adequacy of services for assessment, treatment and support,[8] about :

- the assessment of dual diagnosis, communication, preventative healthcare, and behavioural support needs
- reassessments undertaken due to changed circumstances
- requests for a second assessment.

Similar examination will be available across all other categories of the legislative functions of community visitors.[9] Accordingly, this database will provide information about trends.

Given that the Public Advocate's functions include monitoring and reviewing the delivery of services and facilities to adults with impaired capacity, the appropriateness and benefits of a closer working relationship with the CVP are obvious. As indicated, the capacity of the Office of the Public Advocate to physically monitor and review services and facilities is extremely limited, given its statutory powers and resource levels. Analysis of the statistical data provided from the CVP provides one means for the Public Advocate to monitor and review delivery of services and facilities. This is likely to be very useful to inform the work of the Public Advocate, particularly with respect to those adults who live in some form of residential service.

1.3 Power of a guardian to consent to restrictive practices

In March 2006, *Re MLI*[10] considered the extent of a guardian's power under the guardianship regime. In essence, the issue was whether a guardian has power to give consent for restrictive practices (which could potentially include detention, seclusion and restraint).

Due to the serious implications for adults with impaired capacity for decision-making, the Guardianship and Administration Tribunal gave notice of the hearing to the Public Advocate, and subsequently, the Public Advocate intervened in the proceeding. This issue is more fully reported in section 8.2.1.

1.4 Health care related issues

1.4.1 Withholding and withdrawing life-sustaining measures

When the Queensland Law Reform Commission (QLRC) provided its final report on *Assisted and Substituted Decisions* in 1996,[11] it did not envisage the inclusion of decision-making about withholding and withdrawing of life-sustaining measures by substitute decision-makers.[12] The QLRC considered that the state of the law at that time was unsatisfactory and should be comprehensively reviewed.[13]

When the *Guardianship and Administration Act 2000* was passed, it provided for the Guardianship and Administration Tribunal to make decisions about withholding and withdrawing of life-sustaining measures as 'special health' decisions.[14] In 2001, the legislation was amended. In effect, the changes enabled guardians, personal attorneys for health matters appointed under enduring powers of attorney, and statutory health attorneys to consent to withholding and withdrawing of life-sustaining measures as 'health care,' when commencement or continuation of life-sustaining measures is considered inconsistent with good medical practice.[15] In cases where good medical practice requires a decision to be made immediately, health providers were generally empowered to withhold or withdraw life-sustaining measures without consent.[16] The Public Advocate considers the current regime for end-of-life decision-making warrants close scrutiny in the guardianship review.

In June 2006, the Public Advocate developed a conference paper on aspects of end-of-life decision-making under the guardianship regime in Queensland. The paper was delivered on 7 July 2005 at an international conference, the joint 11th Australasian Bioethics Association Conference and 10th Conference of the Australian and New Zealand Institute of Health, Law and Ethics. The presentation considered the demonstrable inadequacy of the General Principles and Health Care Principle to guide end-of life decision-making under the regime.[17] Particular attention was directed to apparent inadequacies when the substitute decision-maker is a lay person, who has no specialist legal knowledge of the guardianship regime or human rights.[18] The presentation has subsequently been delivered to the staff of the Office of the Adult Guardian.

1.4.2 Ethical guidelines for post-coma unresponsiveness

In April 2006, the National Health and Medical Research Council (NHMRC) called for submissions in response to its Issues Paper, *Developing NHMRC Ethical Guidelines for the Care of People in Post-coma Unresponsiveness (vegetative state) or a Minimally Responsive State*. People in either of these states are extremely vulnerable. It is difficult to imagine that a person could be more vulnerable. End-of-life decisions may be considered for adults in a post-coma unresponsive state.[19] Submissions were made by the Public Advocate which relate to health-care decision-making for people in either a state of post-coma unresponsiveness or a minimally responsive state.

The Public Advocate's submission included comment about the following:

- People are highly vulnerable if there is no minimum time period which must elapse before a diagnosis is made.
- Policy to guide national practice about treatment of people in a state of post-coma unresponsiveness or minimally responsive state should recognise existing legislative requirements, where these exist.[20]
- Having an independent decision made by a substitute decision-maker with respect to health care provides important safeguards for these highly vulnerable adults.
- It is crucial to have clear communication between family members (who are most often the substitute decision-makers) and health professionals.

Draft guidelines are to be developed for consultation by the NHMRC. It is anticipated that the Office of the Public Advocate will make further comment in response.

1.5 Interrelationship between the guardianship regime and other relevant regimes

When new legislation is developed, it is essential that close consideration be given to the interrelationship between the new legislation and other existing legislative regimes.

1.5.1 The Mental Health Act 2000

There is a significant and, at times, complex inter-relationship between the guardianship regime and the mental health regime under the *Mental Health Act 2000 (MHA)*. Complex issues can arise about the appropriate regime under which treatment or health care may be authorised. Also, adults who are treated as involuntary patients, under involuntary treatment orders or as forensic patients, may also have impaired capacity for decision-making about other matters under the guardianship regime.

In May 2005, the Supreme Court of Queensland decided as a matter of statutory construction (interpretation of provisions in the *MHA*) in the case of *Adult Guardian v Langham*,[21] (*Re Langham*) that artificial nutrition and hydration is treatment for schizophrenia for a forensic patient, whose delusional beliefs resulted in him refusing food and or water for lengthy periods. In doing so, it considered that the range of treatment for mental illness which could be given without consent under the *MHA* was wider than had been previously understood to be the case. To be clear, the issue was **not** whether Mr Langham should receive artificial nutrition or hydration if he needed it: the question was whether it could be authorised under the mental health regime, or alternatively, whether the guardianship regime applied.

In the case of *Re Langham*, there was a link between the psychiatric condition and the physical symptoms which required treatment. However, it is not difficult to contemplate situations where the link may be more tenuous, for example, where treatment for a physical condition or physical illness is refused as a result of delusional beliefs. On the basis of the decision, arguably treatment for the physical condition might be given as involuntary treatment under the *MHA*. As a result of the decision, public concerns were voiced that the decision could enable a wide range of physical health care to be provided without consent to people treated involuntarily under the *MHA*.[22]

In June 2006, the Public Advocate delivered a paper at the 5th International Conference of Public Trustees and Public Guardians which examined the concerns, and considered whether they were justified.[23] The paper concluded that the concerns were justified and that legislative reform was appropriate to address the issue.

This issue affects fundamental rights. Adults with capacity have the fundamental common law right to refuse or consent to health care. For adults with impaired capacity, this right is generally exercised through their substitute decision-maker. Under the guardianship regime,[24] it is an offence to carry out health care unless:

- it is authorised by legislation to be given without consent (for example, under the *MHA*)
- consent is given under the guardianship regime, or other relevant Act. (Usually, it will be consent given by a substitute decision-maker in accordance with the guardianship regime)
- it is authorised by an order of the Supreme Court in its parens patriae[25] jurisdiction.[26]

For most health care, except for urgent and minor care, consent of a substitute decision-maker will be necessary before treatment can be given. Specifically, the regime acknowledges that any right of an adult to refuse health care is unaffected.[27]

The decision in *Re Langham* raises the potential for involuntary patients who do not have capacity in relation to physical health care to potentially be denied the fundamental common law right. Allowing a substitute decision-maker to make the decision would accord the greatest possible safeguards through the guardianship regime (which affords external scrutiny of the options for health care) and place the adults as far as possible in the position of a person with capacity, although the right must be exercised by a substitute decision-maker.[28]

It should be noted that following the decision, the then Adult Guardian had discussions with the Director of Mental Health about developing an informal agreement whereby the Adult Guardian's consent would continue to be sought for treating physical conditions of patients on involuntary treatment orders and forensic orders who lack capacity, except for artificial hydration and nutrition for patients with anorexia nervosa. This is a commendable initiative, but an informal agreement is not appropriate as a mechanism to ensure protection of the fundamental rights of vulnerable people.

Subsequently, the Public Advocate has used the conference paper as a basis for advocacy about this issue.

To be clear, it was not disputed that Mr Langham should receive the treatment if needed. The case arose out of concern about how it could be authorised, in recognition of his fundamental rights. This discussion is about the reach of involuntary mental health treatment into other areas of a person's life, beyond psychiatric matters. The issues go to the protection of the fundamental rights of all people with mental illness treated as involuntary patients under the *MHA*.

The Public Advocate also acknowledges that historically, for many Queenslanders with a mental illness, serious concerns have revolved around access to clinical mental health treatment when needed, rather than the limits of what treatment could be received involuntarily. Elsewhere in this Report, the Public Advocate discusses the historic under-funding of the mental health system. It also acknowledges recent and significant increases, which the Public Advocate hopes will substantially improve access to treatment. (Refer further to section 4, *The Mental Health System)*.

1.5.2 'Challenging behaviour'

At the time of writing, the Government is considering legislative and service options for the voluntary and involuntary care of adults with intellectual or other cognitive disability who exhibit severely challenging and threatening behaviour, and who present a significant risk of harm to themselves or the community. (Refer to section 3.2 for more discussion).

Potentially, any new legislative scheme to be developed will interact with at least the guardianship and mental health regimes, and the *Disability Services Act 2006*. The complexities of these interrelationships warrant early and careful attention, to avoid future difficulties.

1.6 Enduring documents

It is an important right of competent adults to make enduring documents (enduring powers of attorney and advance health directives). These documents enable people to make decisions which are effective after their capacity has become impaired, and to appoint a substitute decision-maker/s of their choosing. It is therefore important to ensure that the systems surrounding the use of enduring documents are free of abuse. The Public Advocate has encouraged and supported research and programs with these aims. Refer to section 11.2 for relevant research through the University of Queensland which

the Public Advocate partners. The Office continues to provide support and advice to endeavours aimed at strengthening the safeguards around financial matters in regard to this research.

Third parties, particularly solicitors, are frequently called upon to prepare or witness enduring documents. They are well placed to identify situations of potential abuse or exploitation. For example, situations in which a request is made for documents to be executed where the adult concerned lacks the capacity to do so. This is relevant to the executing of an enduring power of attorney or an advance health directive. Researchers from Queensland University of Technology sought comment from the Public Advocate on the content of a survey of legal practitioners in relation to their practices with respect to enduring documents.[29] The Public Advocate provided written comment with a view to assisting the research process, in order to strengthen the protections for people with impaired capacity.

1.7 Relationships with guardianship entities

The Public Advocate has made arrangements to meet regularly with the President of the Guardianship and Administration Tribunal, the Adult Guardian, the Manager of the Community Visitor Program and the Public Trustee. This provides for regular communication about issues that may have been the subject of advocacy in recent months, and a forum for further exchange of views about systems issues.

STOP PRESS *Re WFM*

In September 2006, the Public Advocate was granted leave to intervene in proceedings before the Guardianship and Administration Tribunal in *Re WFM*.[30] Although this occurred outside of the reporting period for this Annual Report, the decision is significant enough to include brief details. The issue involved the role of the Guardianship and Administration Tribunal in the guardianship regime. The Public Advocate is not aware of any other reasons for decision considering it.

Usually, the Tribunal appoints guardians and administrators to make decisions about matters. On occasions it gives advice, directions and recommendations. In *Re WFM*, the Tribunal accepted that it may give a binding direction, effectively making the decision about a matter for which a guardian or administrator is appointed. This includes decisions about where an adult lives, about their health care, and about how their money is to be invested. When the Tribunal gives such a direction, its decision about the particular matter is imposed on the parties. In this situation a guardian or administrator will be obliged to carry out the Tribunal's decision, rather than make the decision him/herself.

The Public Advocate's submissions were consistent with the Tribunal's decision.

Comment

This decision makes it clear that others (for example, family members, friends and other people in the adult's support network) may ask the Tribunal to make the decision about a matter in circumstances, for example, where they do not think the guardian or administrator is taking all relevant matters into account. Also, guardians and administrators can ask the Tribunal to make the decision about a matter, in circumstances where they are unsure what decision to make.

2. The Legal System

2.1 The legal system

This section is general in nature, and does not cover criminal justice issues. Refer to section 5 for criminal justice issues.

2.1.1 New advocacy opportunities

During 2005-06, the Public Advocate encouraged notifications of legal proceedings before Courts and Tribunals which involve significant systemic issues. This was done so that consideration could be given to seeking leave to intervene in appropriate cases. The Public Advocate considers that more frequent intervention in legal proceedings in suitable matters (provided for under s 210 of the *Guardianship and Administration Act 2000*) will facilitate the performance of her statutory functions. Although Courts and Tribunals are generally concerned with resolving individual matters, these matters sometimes reveal and consider important systems issues. The Public Advocate will seek to be involved only in the most significant cases, in which the particular systems issue is an integral consideration in the deliberations of the decision-making body in the hearing.

Refer to section 8 of this Report for discussion on the various legal interventions undertaken in 2005-06 in the Guardianship and Administration Tribunal, Coronial inquests, and the High Court of Australia.

2.1.2 The legal profession

In June 2006, the Public Advocate addressed the Queensland Law Society's Elder Law Section. Arising from that meeting, discussion has been initiated in relation to some possible joint work between representatives of the Elder Law Section and the Office of the Public Advocate in relation to future responses to elder abuse. Elder abuse is discussed at section 6.2.

The Public Advocate has also made endeavours to raise the profile of the Office with the legal profession generally. Members of the legal profession are ideally placed to identify systemic issues, either in relation to the legal system generally, or in relation to other systems.

2.2 *Coroners Act 2003*

The *Coroners Act 2003* gives the Coroner the power to make comments about systemic matters of public health or safety and ways to prevent deaths from occurring in similar circumstances in the future. However, there is currently no mechanism requiring agencies to report back to the Coroner following the making of comments.[31] It is understood that Coroners supported a report-back mechanism at the time the current legislation was being drafted, but that ultimately, it was not included. It is pleasing to note that despite no formal requirement for reporting back, Coroners are increasingly receiving responses to their comments.

The Public Advocate considers there to be limited benefit in having Coroners empowered to consider and make comments about systemic matters unless there is some accountability by those agencies with respect to the comments made. It is suggested that there should be legislative amendment to mandate mechanisms for reporting back following Coroners' comments. Some flexibility in relation to timeframes is appropriate. Some recommendations may be implemented immediately; for others, their efficacy and implementation may require longer-term research, investigation and planning.

This suggestion is consistent with the expanded role of Coroners under the current legislation. The Public Advocate has advised the State Coroner of her views in this regard, and recently referred her comments for consideration to the Attorney-General and Minister for Justice and Women. The Public Advocate's interest in this issue is to maximise the impact of Coroners' recommendations, for the benefit for adults with impaired decision-making capacity, who are users of the systems implicated in deaths.

2.3 Legal Aid Queensland

2.3.1 Review of civil law services

During 2005-06 Legal Aid Queensland (LAQ) conducted a review of its civil law[32] services. The Office made a number of submissions to this review concerning clients that may have a decision-making disability.

- A more proactive outreach approach is needed by LAQ for people with an intellectual disability, including increased staff and community education.
- Specialised LAQ forms should be designed for people with impaired capacity.
- Grants of aid to legal practitioners should take account of the additional time that is needed to provide the support that people with a cognitive disability may require.
- LAQ should provide more assistance and advice to legal practitioners on the issues and needs of people with impaired capacity (for example, addressing the risk of over-compliant behaviour, and overcoming communication problems).
- Consideration should be given to funding the defence of peace and good behaviour applications, where these are directed at the 'challenging behaviour' of people with impaired decision-making capacity.
- LAQ's work should be expanded to provide aid in appropriate matters before the Guardianship and Administration Tribunal. The Tribunal has also previously recommended that LAQ have the capacity to grant aid upon its request.
- It was suggested that LAQ guidelines for child protection matters be expanded to include funding for fathers with impaired capacity (already available for mothers), funding of expert reports, and assistance to argue for meaningful contact arrangements in cases where day-to-day care is unlikely to be restored to parents.

2.3.2 Child protection

Since October 2005, a number of changes have been made to LAQ's funding guidelines in relation to child protection matters which have benefited people with a disability.

Grants of legal aid have been made available for representation for parents and children at family group meetings and court ordered conferences in an attempt to facilitate early intervention and resolution of matters. These grants of aid are not subject to the usual merit test, in which the applicant has to show reasonable prospects of success.

Legal aid funding has also been made available to represent parents in contested child protection hearings, provided that they have reasonable prospects of challenging the child protection order being sought, or that there are special circumstances (for example, where the applicant or child has an intellectual disability).

Legal aid funding has also been made available for the separate representation of children with an intellectual disability in relation to applications for special medical procedures in the Guardianship and Administration Tribunal.

The reforms in this area are highly commendable. LAQ is encouraged to continue this process, to ensure that vulnerable people receive equitable access to legal representation.

2.3.3 Intellectual disability/cognitive impairment in the justice system

During 2005-06 LAQ undertook a collaborative project with other Government Departments to better respond to people with an 'intellectual disability or cognitive impairment' in the justice system. A commitment to, and funding for, the project was received from Disability Services Queensland, Queensland Corrective Services, the Office for Women, Queensland Police Service and the Department of Justice and Attorney-General. The Office was not a part of the reference group but met with the consultants to provide input to the review.

The project aimed to:

- identify the legal needs and issues for adults with an 'intellectual disability or cognitive impairment', with a particular focus on women
- provide practical resources and supports to ensure improved responses by stakeholder agencies
- develop or recommend an appropriate screening tool for use by relevant stakeholders, to be used to identify when an individual may have an intellectual disability or cognitive impairment
- develop an appropriate response to their needs, once identified.

The report was completed in April 2006 and relevant departments are currently considering implementation of those recommendations. The project has been added to the CEO Sub-Committee on Disability workplan. This Sub-Committee is discussed at Section 3.8. The Office will take an ongoing interest in this project in the coming year.

2.3.4 Disability Action Plan

During 2005-06 LAQ also introduced its Disability Action Plan, in recognition that people with disabilities may have difficulties in expressing the merits of their case, and that time-limited legal advice does not generally cater well for their needs. The plan details a number of initiatives to be undertaken over the next two years. The Office looks forward to implementation of these strategies, particularly new guidelines for the provision of grants of aid.

3. The Disability System

3.1 'Challenging behaviour'

The Office of the Public Advocate has had a long-standing concern about the inadequacy of arrangements to serve the needs of adults with impaired decision-making capacity who have what is often termed severely 'challenging behaviour' and complex needs. This concern extends to the services available to support adults, and the legal basis for use of restrictive practices, including detention, seclusion and restraint. This issue is identified as a priority area in the Public Advocate's 2006-08 Business Plan.

A commonly-accepted definition of 'challenging behaviour' is as follows:

> *Behaviour of such intensity, frequency or duration that the physical safety of the person or others is placed in serious jeopardy or behaviour which is likely to seriously limit or deny access to the use of ordinary community facilities.*[34]

'Challenging behaviour' was discussed in the previous five Annual Reports of the Public Advocate to the Queensland Parliament, and the Office's first Issues Paper, *Opening Doors to Citizenship: quality supports for people with intellectual disability who have complex unmet needs and who currently challenge the capability of the service system*. In this Paper, the need to obtain the right balance between the safety of the community/staff and the rights/interests of the individual was acknowledged.[35]

In 2005, the issue of 'challenging behaviour' became a central focus for the Public Advocate. Both meetings of the previous Public Advocate's reference group, held in March and August of 2005, were devoted to the issue and resulted in the creation of a broad-based coalition of service providers, academics and consumer/family groups to take a united position to Government, drawing attention to the issue and calling for systems reform. Over 50 groups were represented in this coalition, which presented its request to the Honourable Peter Beattie MP Premier of Queensland in late 2005.

In its 2004-05 Annual Report, the Public Advocate recommended that:

> *the Queensland Government establishes a taskforce with cross-departmental and cross-sectoral membership to lead the development of coordinated responses to vulnerable people with high support needs and 'challenging behaviour'.*[36]

Among other things, it is suggested that individuals with 'challenging behaviour' who do not receive appropriate behaviour support are at risk of:

- being subject to ineffective management programs, with or without a legal basis for use of restrictive practices
- increasing levels of externally imposed control, which may serve to exacerbate 'challenging behaviour'
- being feared and demonised by staff
- being subjected to chemical restraint
- being subjected to inappropriate treatment by staff who lack understanding or sufficient training or support.

3.2 'Challenging behaviour' – review of options

In late April 2006, the Queensland Government appointed a panel to develop legislative and service options for the voluntary and involuntary care of adults with intellectual or cognitive disability who exhibit severely challenging and threatening behaviour, and who present a significant risk of harm to themselves or the community. Former Supreme Court Judge, The Hon. W Carter QC was appointed, together with the Director-General of the Department of Communities and Disability Services and the Director-General of Housing as co-chairs of the Panel.

The terms of reference require that the Panel:

- Review existing provisions for the care, support and accommodation of people with an intellectual/cognitive disability who represent a significant risk of harm to themselves or the community
- by way of written report on the review develop options and make recommendations on legislative framework and service requirements for the provision of both voluntary and involuntary care to the cohort
- by way of interim advice as considered appropriate or necessary by the Panel, detail any response that may be implemented under the current legislative framework if and when a response is identified during the investigation
- identify where restrictive practices are currently used and the problems that these may pose.

The report was to be provided to Government within twelve months. However, it is understood that the report was completed and provided to the Minister for Communities, Disability Services, Seniors and Youth by end of July 2006.

The Public Advocate commends the Queensland Government for commissioning this review. At the time of writing, it is unknown what recommendations have been made and whether these will be accepted by Government. There was some opportunity for the Office, and other interested persons and organisations, to make comment about the issues which deserve consideration and the options which may be appropriate. However, the options being considered by the Panel were not available for comprehensive comment by the Public Advocate. For example, no consultation paper was made available to the Office. Also, it was unclear whether the review would include recommendations about a forensic response, in relation to those adults in the target group who are already in the criminal justice system.

The Public Advocate identified a number of key systemic issues to be addressed in considering systems reform for this group of vulnerable people.

Protection of human rights

The human rights of citizens with impaired decision-making capacity should be protected, and should be the same as for any other citizen. Any legislative scheme which enables detention and other restrictive practices must contain appropriate and robust safeguards to protect their rights and to prevent abuse, neglect and exploitation. Authorisation of restrictive practices should only occur within a clear, accountable and criteria-based legislative framework, and include regular and independent review mechanisms. Authorisation of involuntary use of restrictive practices should be in the hands of an independent body with appropriate expertise. Where a person has the capacity to consent, proper provisions and safeguards should be in place.

Least restrictive principle

A vigorous commitment is needed to the principle of 'least restrictive environment'. There is a risk that once a person is identified as 'difficult', they may become subject to automatic and arbitrary use of restrictive practices. In effect, this could mean their permanent detention. It is important that the particular circumstances of each adult be carefully considered, and that restrictive practices be limited to the option of last resort. Also, it should not mean that adults with 'challenging behaviour' cannot live in the community and require institutional care.

Prevention

Services should be designed to prevent the development or escalation of 'challenging behaviour'. Research suggests that most adults who develop 'challenging behaviour' can learn more positive ways to relate to others. Further, if they are appropriately supported, those who are at risk of developing 'challenging behaviour' are less likely

to do so.[37] Some research suggests that, in some cases, addressing communication issues will impact positively on underlying 'challenging behaviour'.

Service infrastructure

An appropriately-resourced service system should be created for people with impaired capacity who have complex support requirements. Evidence suggests that appropriate support systems can minimise the development of 'challenging behaviour'. However, for those who have developed it and who are a risk to themselves or the community, it is important to have an appropriate and well-resourced service response. Service infrastructure should be technically competent, coherent and principled. The Office maintains that it is possible to maximise opportunities for liberty and minimise the risk of neglect and abuse to individuals, within a context of overall community safety.[38]

Legislative and service integration

The relationship between any new legislative regime, and the guardianship and mental health regimes, should be clear and complementary. (Refer to section 1.5).

Systemic causes of 'challenging behaviour'

The systemic factors that contribute to the development and escalation of 'challenging behaviour' should be identified and addressed, to minimise the numbers of adults affected. This means that systemic change should be widespread, and directed not only at the delivery of services to adults who currently have 'challenging behaviour', but also others who are at risk of developing it. In this regard, concerns are held that adults not infrequently learn 'challenging behaviour' from other people, for example as co-tenants in a group home. Further, although the Public Advocate does not have a mandate for children, systems for children also require consideration. In some cases, 'challenging behaviour' develops and escalates during childhood.

Diversionary mechanisms

Legal mechanisms and funded services are needed to divert people with impaired capacity and complex support requirements away from the mainstream criminal justice system and the forensic mental health system. These systems are not designed to teach adults with an intellectual disability, acquired brain injury or autism spectrum disorder, and who have 'challenging behaviour', new ways to relate with others and their environment. In the long-term, the interests of community safety would be better served by the development of specialised services and legislative options to divert adults away from these systems and into rehabilitation services.

Workplace culture

Workplace culture and practices requires reform. This should include recruitment, retention, training, and ongoing support and development. It must be acknowledged that working with adults who have severely 'challenging behaviour' presents enormous challenges for support staff at times. They may be subject to unpredictable violent behaviour in the course of their ordinary working day, and suffer injuries at the hands of the adults they support. This is not a profession for everyone. Workers need to be carefully selected: they should possess a sound understanding of 'challenging behaviour', and knowledge of the methods and skills to teach positive behaviour. They need to be deeply committed to the adults they support, and have a genuine respect for their rights and needs. Accordingly, appropriate selection, training, support and ongoing development processes are crucial.

Summary

In summary, the issue of how to appropriately respond to the needs of this group of very vulnerable adults is complex. It has been of considerable concern to a number of jurisdictions. Although lessons can be learned from existing research and the work in other States, each jurisdiction must

grapple afresh with the issues in its own context of available resources, services, and existing legislative regimes when developing new systems.

It is critical that the review does not reinstitutionalise this vunerable group. It is hoped that the current review will lead to service and legislative systems reform, that will create a better quality of life for the adults and protect their rights and interests, while addressing legitimate public safety concerns. If the reform does not achieve these important goals, those who will suffer the consequences are among the most vulnerable adults in our society.

3.3 Accommodation Support and Respite Services

A review of the Accommodation Support and Respite Services (AS & RS) operated by Disability Services Queensland was undertaken in 2005. Its aim was to improve services to clients and their families.[39] The 42 recommendations of the review were endorsed for implementation by the Queensland Cabinet in December 2005 and an allocation of over $33 million made to implement the recommendations over four years commencing from 2005-06 .

3.3.1 Historical context

AS & RS is the name now given to what was formerly the 'Alternative Living Service' (ALS), originally developed in the late 1970s in response to concerns about institutionalisation. At that time, the ALS was seen as a significant innovation, implemented to provide improved living arrangements and quality of life for some residents of the Challinor Centre at Ipswich. The ALS expanded during the 1990s, as a result of people moving from both the Challinor and Basil Stafford Centres, as part of the 'institutional reform' program in Queensland.

There have been several attempts at reforming the ALS system over the years. Concerns were identified during a 1999 review of the ALS, including the inflexibility of the ALS model, the lack of lifestyle support options, and the inequitable allocation of resources across the State.

In November 2000, DSQ announced the ALS Improvement Project.[40] A workshop of DSQ staff and non-government organisations reached agreement about the need for major reform, and considered how improvements might be achieved. A project officer and external consultant were appointed to plan and progress the changes in collaboration with key stakeholders. For a range of reasons, this project did not proceed far.

Serious concerns were brought to the Public Advocate's attention in 2001.[41] These issues included: the grouping of people with 'challenging behaviour' together, limited personalised service delivery, incompatibility of residents, residents being moved without proper consent, staffing problems, an institutionalised workplace culture, social isolation of residents and staff, limited access to communication support for non-verbal adults, and a lack of activity resulting in boredom for some residents.

The Office identified that many of the concerns were longstanding, and had remained unaddressed for many years. In 2001, DSQ acknowledged that families, staff and community groups had raised repeated concerns about the quality of life of people supported through the ALS.[42]

3.3.2 The recent review

Another opportunity for quality improvement occurred in 2005 with an external review of the AS & RS. This was welcomed by the Public Advocate, and the Office participated in lengthy discussion with the review consultant.

Since the conclusion of the review, the Public Advocate has met with the Project Director and has established a good working relationship, characterised by open communication and robust debate. Quarterly meetings have been agreed. Both agencies have acknowledged that, at times, there

is likely to be discomfort in the relationship: the systemic advocacy role of the Public Advocate means that decisions and practices will attract questions and challenge. It is commendable that the leadership of the implementation project and AS & RS senior management are receptive to external scrutiny in relation to systemic issues.

3.3.3 Implementing and monitoring reform

Currently, the AS & RS serves some 577 clients, most with an intellectual disability, while the respite arm operates eight centres, serving over 400 people. An expansion of respite services is currently planned. Therefore a large number of individuals and families will be affected by the changes; there is the potential for significant positive impact on many people. Furthermore, a large financial commitment has been made by Government to ensure that change occurs. The Office of the Public Advocate will continue to monitor this issue, and will support change that is in the interests of the adults with an intellectual disability.

The review's stated purpose was to assess capacity and capability issues. The 42 recommendations are largely non-programmatic in content, referring little to substantive issues of the service model. Recommendations addressed structural issues, staffing, management and practice leadership, workforce renewal, disciplinary matters, performance contracts, data collection, and protective measures.

The Office welcomes the review findings, including the need for:

- a change in workforce culture to achieve a focus on clients
- increased scrutiny and safeguards
- strengthening the protection for clients
- strengthening practice leadership
- improved management capacity to support implementation and monitor activity.

Apart from an intention to introduce the 'active support' methodology[43] in service delivery, the actual service model of the AS & RS (the 'group home') remains largely unchallenged.[44]

3.3.4 AS & RS and complex needs

The Office notes the Government's decision to clarify DSQ's AS & RS service arm as a safety net provider. It has been clarified that the people to be served by the new arrangements will be those adults with an intellectual disability who have high and complex support needs. As implied in a number of recommendations, this will require highly skilled practitioners and support staff to ensure successful implementation.

3.4 Funding and research

Despite the significant increases in disability funding by the Queensland Government over the past few years, a substantial level of unmet need remains. Thousands of Queenslanders with a disability who need access to support do not receive it, or receive support insufficient to adequately meet their needs. Many live in undesirable circumstances which are not of their choosing: institutional settings, group homes with co-tenants they have no compatibility with; in boarding houses and hostels, historically the services of last resort; or in family situations with no external support.

The advent of individualised support packages significantly changed the lives of many people with a disability in Queensland, by allowing a sense of autonomy for people to enjoy a good quality of life in their own home in the community. However, despite the clear advantages of individualised funding regime, it has been said to have created a 'lotto system', in which some people are 'lucky' enough to receive support while many more receive nothing. There are also criticisms that current funding models do not necessarily achieve the best outcomes for adults with a psychiatric disability.

The Public Advocate strongly supports the right of an adult to live in their own home in the community. It is of concern that thousands of Queenslanders continue to live without support or with limited support, despite their clear needs. Significant additional funding by both levels of Government is needed to provide individual support for all people with decision-making incapacity to live alone in the community.

In addition to a significant increase in funds, the Public Advocate is convinced that it would be helpful for some comprehensive research to be undertaken. The purpose of the research would be to identify and evaluate service and funding models in use worldwide, to develop other possible models, and to make recommendations for models that may be feasible in the Queensland context. Broad research of this nature would be very useful given that there has not been rigorous, independent and comparative evaluation of world-wide funding and support models. A university of high standing with expertise in disability issues would preferably undertake the project.

Government agencies, non-government service providers and community advocacy organisations could partner in the research and provide input in defining the scope of the research. A solid barrier to transformational change exists in the absence of comprehensive consideration of possibilities.

Whatever possibilities are considered, the individuality of people with a disability must appropriately guide the exploration of alternative possibilities. Such a focus will serve to acknowledge the life journeys of adults, and will facilitate these by identifying needs and supports for life as individuals seek to pursue a lifestyle which has meaning and possibility. Adults with a decision-making disability have the same rights as other adults to do so.

3.5 *Disability Services Act 2006*

The *Disability Services Act 2006* (DSA) became operational on 1 July 2006. Its primary objects are to acknowledge rights (by providing for human rights principles and service delivery principles), to ensure safe, responsive service delivery by DSQ-funded services (including a focus on quality, the strengthening of the regulatory framework, the strengthening of accountability and disability service plans) and protection (including mandatory criminal history screening and increased investigation powers).

In September 2005 the Office was invited to attend a targeted consultation workshop of 1½ days with representatives from the Queensland Disability Council, Regional Disability Councils, and other stakeholders including relevant government agencies, service providers, community groups and advocates. This followed the release of issues papers and public consultation in 2003-04.

Given that participants were not provided with a copy of the draft legislation prior to the workshop, advocacy was limited to broad preliminary reactions to the Bill which, as the final legislation indicates, was complex and lengthy.

The Office made specific recommendations and comments:

- The legislation should maintain its aspirational focus, and seek to achieve equality in community life for people with a disability. It should not be limited to ensuring service provider compliance with DSQ funding requirements.
- With respect to human rights, some people may need their rights 'accorded to them' rather than their being 'empowered' to exercise them.
- The confidentiality provisions should be carefully considered – sometimes confidentiality provisions are rigidly applied, to the detriment of vulnerable people.
- The power to remove people from abusive circumstances should be considered carefully to ensure that it is exercised with the interests of

the particular person in mind. In particular, so that they experience the least disruption to their routine and contact with friends and workers.

- There is a need to consider how some of the provisions will operate in rural and remote settings.
- Government departments should be required to publicly report about outcomes pursuant to their Disability Service Plans.

It remains to be seen whether the new DSA will work to the benefit of vulnerable people and provide them with services and rights to aid their participation in the community. Community stakeholders have notified the Office of additional concerns in relation to several issues, including:

- the prescriptive nature of the legislation may not protect people as well as expected, and may cause administrative cost overruns at the expense of client services
- viability requirements may lead to practices that are not in the interest of clients, namely vacancy management processes leading to disruption and frustration.

The DSA commenced after the 2005-06 reporting year. In the forthcoming year, it is anticipated that the Public Advocate will take an active interest in its implementation, both with respect to the issues identified above, as well as other issues such as:

- the application of the principles
- the impact of new funding and reporting arrangements on the adults receiving services
- the impact of the quality requirements and accountability framework
- the tangible outcomes from Disability Service Plans.

3.6 Disability services complaints system

In 2005-06, DSQ began implementation of its new system for responding to complaints and misconduct allegations, led by its Complaints, Compliance Investigations and Misconduct Prevention Branch. The disability complaints function has been strengthened by the new *Disability Services Act 2006*.

In previous Annual Reports, the Public Advocate was critical of the capacity of government agencies, including DSQ, to respond in a timely and appropriate manner to serious complaints of abuse, neglect or exploitation of people with impaired capacity. In its 2003-04 Annual Report to the Queensland Parliament (sections 2.1 and 2.2), the Public Advocate examined two compelling examples of this systemic failure; both occurred in residential facilities. Allegations of serious abuse or neglect had been raised with, and known to, a number of Queensland Government agencies. However, this knowledge had failed to translate into appropriate redress or enhanced protection for vulnerable residents for lengthy periods.

Therefore, the Public Advocate welcomes the Queensland Government's renewed interest in this area, and commends DSQ for its stated commitment to strengthening the protection it affords vulnerable people with disabilities from abuse, neglect or exploitation.

DSQ has undertaken an initial step in this implementation process, commissioning a report on workplace breaches and misconduct management systems. The Public Advocate's views did not inform this process. At the time of writing, the consultant's report had recently been made available to the Public Advocate for her consideration. Some 23 recommendations for DSQ are identified by the consultant.

The Public Advocate is likely to take a stronger interest in these recommendations in the coming year. Preliminary issues of interest include:

- how effectively the complaints system will operate 'on the ground'
- the protection afforded to whistleblowers in the disability system
- the interaction between the DSQ and Adult Guardian complaints management systems
- whether DSQ's stated commitment to internal investigation will provide sufficient protection for vulnerable people with disabilities, and rebuild community confidence in DSQ's capacity for appropriate response.

The Public Advocate has also created an informal agreement with the Complaints, Compliance Investigations and Misconduct Prevention Branch of DSQ, about the future involvement of the Office. (There is also a protocol in development between the Complaint Branch and the Adult Guardian regarding referrals, information sharing, and joint investigations.)

The new complaints system brings with it new possibilities and challenges, and the potential for greater protection for vulnerable people. The Public Advocate will continue its monitoring in the coming year.

3.7 Younger people in aged care facilities

During 2005-06 the Office maintained its long-standing interest in the (approximately) 1,300 young people who reside in aged care facilities, and played a monitoring role with respect to the joint Commonwealth-State initiative to:

- provide age-appropriate care for younger people with disabilities who are currently in residential aged care
- reduce the number of younger people with disabilities entering residential aged care.

This initiative was formally announced in February 2006. A total of $46 million (with equal contributions from the State and Commonwealth Governments) will be rolled-out in Queensland over a five-year period.

This initiative aims to assist younger people to move into alternative accommodation arrangements, to divert younger people at risk of entering residential aged care, and to improve disability support services to people who remain. It is also intended that there will be some information-sharing between jurisdictions on innovative alternatives for this vulnerable group. DSQ has carriage of this project in Queensland, in partnership with the Commonwealth Department of Families, Community Services and Indigenous Affairs.

It is commendable that both levels of Government are working towards addressing the needs of younger people in aged care, and that both have provided initial funding for this work to begin.

While being cognisant of the limited resources currently available to the project, the Office has provided advocacy on a range of issues pertaining to its implementation.

- There should be a continuum of accommodation options, depending on people's individual wishes and needs. DSQ has agreed with this principle.

- There are risks that younger people will simply leave one form of institutionalisation, only to enter another (for example, separate nursing homes for younger people).
- There is a risk that people with impaired decision-making will have less capacity to access this program, relative to other younger people with disability. Additional measures are needed to facilitate their participation. These should include (but not be limited to) the involvement of substitute decision-makers or informal guardians.
- Appropriate and robust decision-making processes should be in place in relation to accommodation decisions for people with impaired capacity, which may or may not involve formal guardianship appointments. DSQ has initiated discussions with the Adult Guardian on this issue.
- The current project, which prioritises people under 50 years, will affect less than 20% of all younger people in aged care facilities.[45]
- Assessment processes should incorporate a range of factors including the maintenance of social networks and the wishes of the individual, and should not be driven solely by medical needs.
- Support will be needed to facilitate the participation of individuals and families, given the initial fear and uncertainty change may bring. To many in the community, institutional care carries with it a presumption of security, safety, and lifelong care. Such assumptions are often ill-founded.

At the time of writing, DSQ had advertised for tender the delivery of services in 10-20 bed facilities, and for assessment processes. Other accommodation models are also under development.

3.8 CEO Sub-Committee on Disability and Reference Group on Disability

In late 2005, the Honourable Peter Beattie MP Premier of Queensland approved the establishment of the Human Services Chief Executive Officer's (CEO) Sub-Committee on Disability to provide executive leadership in whole-of-government policy, program development and service planning for disability. The Reference Group on Disability was established as an advisory body to the CEO Sub-Committee on Disability. These arrangements replace the Framework Implementation Committee which had operated under the Government's 2002-05 Strategic Framework for Disability.

The CEO Sub-Committee comprises the chief executive officers from various government departments and is chaired by the Director-General of DSQ. The Reference Group comprises representatives from government departments as well as the Office of the Public Advocate; the Office of the Adult Guardian; the Commission for Children, Young People and Child Guardian; and community organisations. The Reference Group on Disability does not have a decision-making or monitoring role; its function is advisory only.

The Reference Group on Disability meets quarterly and first met in late April 2006. In the 2005-06 year, members had an opportunity to comment on:

- draft guidelines for the Disability Service Plans, to be developed by each government department in accordance with the *Disability Services Act 2006*
- evaluation of the Queensland Government Strategic Framework for Disability 2002-05.

The Public Advocate raised concerns about the link between the Reference Group on Disability and the CEO Sub-Committee. The Terms of Reference, provided to the Reference Group, stipulated that all communication with the CEO Sub-Committee would occur through the Reference Group Chair.

In this context, the Public Advocate raised questions about how the Group could be a comprehensive and influential source of information and advice to the CEO Sub-Committee, given that the minutes of Reference Group meetings would be unlikely to detail the full range of issues discussed and views canvassed by members. The Public Advocate will take an interest in the workability of the link between the two bodies.

The Public Advocate, and some other members of the reference group, subsequently provided more detailed written comment in relation to the draft Disability Service Plan Guidelines. The Public Advocate's comments included the following:

- The need for an overarching, whole-of-government vision to articulate areas of social change for people with a disability.
- The need for a statement of rights and underpinning principles.
- The need for clear leadership of the process.
- The process and timeframes do not facilitate use of information gained from evaluation of the Strategic Framework to inform the development of the initial three-year Disability Service Plans.
- If the Plans are to meaningfully inform the way that Government departments conduct their business with respect to people with disability, considerable expertise and assistance will be needed. The draft guidelines were general in nature, and lacked specific examples of the range of actions and outcomes that could be considered within each department's Plan. This could limit the effectiveness of these Plans, and ultimately the level of community support for the Government's reform agenda in disability.
- Independent, outcome-based evaluation is critical.

At the time of writing, it was understood that an updated draft of the guidelines will incorporate some changes with regard to these comments. It is also understood that the Guidelines will clarify the coordination of input from the Reference Group on Disability into the development of Disability Service Plans.

Advocacy was also provided by the Office in relation to the proposed evaluation of the Government's Strategic Framework for Disability as follows:

- The announcement of an independent review, and outcome-based reporting against the Framework, was welcomed. This is consistent with previous recommendations by the Public Advocate.
- Because of the timing of the evaluation, outcomes will not inform the development of initial departmental Disability Service Plans. This raises questions as to the purpose of the evaluation: will it lead to another Strategic Framework, or similar vehicle for driving reform across departments? Comment was provided with respect to the development of a new Framework.
- There is no explicit commitment that the evaluation, while reviewing the success of the Strategic Framework against its own benchmarks, will attempt to assess its actual impact on the lives of Queenslanders with disability.
- The evaluation, and its recommendations, should cover the original period of the Framework (2000-05).
- Both achievements and failings should be reported fairly and accurately. There should be analysis of why some strategies worked and others did not.

- The evaluation should involve broad consultation, including people with a disability, the Reference Group on Disability, members of the original Framework Implementation Committee, and carers.
- The report should be released publicly. This will promote transparency and public confidence in the Government's commitment to people with a disability.

The Public Advocate has been advised that details from the evaluation will be provided to departments in due course, so that departments can consider this when reviewing their Plans. The Public Advocate has also been informed that the need for a new Framework would be further considered following the evaluation of the Framework and development of Disability Service Plans by departments. Responses in relation to other submissions are not known at the time of writing.

It is pleasing to note that the Reference Group on Disability has recently been consulted in relation to a draft DSQ policy statement for preventing and responding to the abuse, neglect and exploitation of people with a disability.

Administration Officers Cheryl Mohan-Druce and Mena Ward

3.9 Non-government organisations

The Office of the Public Advocate advocates not only in the government sector, but also the non-government sector. There has been regular contact with non-government organisations. In the 2005-06 year, advocacy occurred around tenancy related issues and the movement of adults within residential services. Also, issues were raised with the Office through parent and carer groups. Issues have sometimes arisen when people with mental illness transition from an inpatient mental health service to the community.

In the coming year, the Public Advocate intends to continue to monitor issues arising in relation to the non-government sector, and will take a particular interest in tenancy related issues and substituted decision-making for adults. (Refer to section 7.4).

4. The Mental Health System

4.1 Review of the *Mental Health Act 2000*

On 23 May 2006, The Hon. S. Robertson MP, Minister for Health, announced a review of the *Mental Health Act 2000* (the *MHA*). Mr Brendan Butler AM SC was subsequently appointed to carry out this review. The purview of this work pertains primarily to protecting the interests of victims and families in the mental health system, the adequacy of the legislative provisions for Limited Community Treatment (LCT), and the referral of matters from the Director of Mental Health to the Attorney-General.

This review followed a period of media scrutiny on access of forensic patients to LCT. Access to LCT can be authorised by the Mental Health Review Tribunal or the Mental Health Court. Community treatment is widely recognised as important in a patient's recovery process, and as integral to transition back into the community after a period of extended institutional care.[46] Anecdotally it is noted that the *MHA* is generally well respected as providing a progressive and balanced approach to the treatment of involuntary patients who have a mental illness, including forensic patients.[47]

At the time of writing, the Public Advocate had made preliminary submissions to the Review, and intends to make further submission later in 2006, following the release of a Discussion Paper. The Public Advocate supports the overall thrust of the *MHA*, and would encourage the Government to find ways of respecting the needs and rights of victims and their families without placing at jeopardy years of progressive mental health reform – reform which, generally, serves the interests of the wider Queensland community well.

Beyond the individual matters which attracted public attention, a broader systemic issue persists. Namely, the perception among segments of our community and the media that people with a mental illness are inherently dangerous, and the mental health system a 'soft option' for criminal behaviour.[48] Stigmatising and inaccurate reporting of mental illness continues from time to time, despite numerous examples of responsible reporting. The Public Advocate acknowledges the rights and needs of victims to be heard. However, stigmatising reporting – and the harmful public attitudes this perpetuates – threaten decades of progressive mental health reform, as well as the rights of the many Queenslanders who live with a mental illness.

4.2 Health reform

During 2005-06 the Public Advocate took an interest in the reform process of Queensland Health, due to the implications this has for services to people with impaired capacity. However, as noted in section 10.1, the capacity of the health system to meet the physical healthcare needs of all cohorts with impaired capacity will be of greater interest to the Public Advocate in 2006-07.

4.2.1 Ongoing reform in mental health

The recent period has seen public scrutiny of the health and mental health systems. Queensland is part-way through major reforms of its health system, as the result of multiple public inquiries into Queensland Health. Also, Queensland (and other jurisdictions) is on the cusp of major reform with respect to mental health services. This is driven, in part, by the Senate Select Committee on Mental Health and Council of Australian Governments' interest.

As a result of high-level political commitment to addressing systemic failures, a heightened public awareness of the issues, and a significant increase in Commonwealth and State funding, the present period is one of considerable opportunity.

In July 2006, the Commonwealth released its $1.9 billion *National Action Plan on Mental Health 2006-11*. The Commonwealth Government is to be commended for this important step towards improving the mental health of vulnerable Australians. National leadership

on this issue represents perhaps the greatest potential for advancing the rights of people with a mental illness that Australia has seen since the National Mental Health Strategy commenced in 1992.

The Queensland Government is responding with its own five-year plan which, at the time of writing, is in draft form and is yet to be released for public comment. This strategy is expected to articulate a number of new directions for improving the lives of Queenslanders with a mental illness. Based on a preliminary draft provided to the Office, the Public Advocate supports the general direction of the strategy, and hopes that it will serve as a potent vehicle for driving systemic change across the mental health system.

There is also a significant increase in State mental health funding, accompanying the new Queensland mental health plan. The total (net recurrent) increase in spending was not available at the time of writing, however the Public Advocate understands the increase to be significant.

The Queensland Government is to be commended for this much-needed increase in funding for mental health.

It is hoped that this combination of factors will begin to turn the tide on the historic, systemic neglect of mental health in Queensland, which has seen the State appear at or near the bottom of (per capita) funding tables consistently since the inception of the National Mental Health Strategy.[49]

The Public Advocate will continue to monitor the implementation of these reforms, and will seek to support and influence them where necessary. The following issues have been the subject of the Office's advocacy already, and are likely to be of continuing interest in the coming year.

- The Government needs to demonstrate consistent and timely implementation of mental health policy reform across all health districts throughout the State. This issue was examined in the 2004-05 Annual Report of the Public Advocate[50] and was again highlighted in the Public Advocate's interventions in coronial hearings in 2006.
- The Director of Mental Health (and the Mental Health Branch which supports him) should have the mandate and resources to lead, support, monitor and maintain full implementation of policy reform. It is of some concern that, under the Health Action Plan arising from the Queensland Health Systems Review (*Building a better health service for Queensland,* October 2005), the resources of the Mental Health Branch were significantly reduced. This places the consistent application of mental health policy throughout Queensland at significant risk. Staffing establishment had been reduced dramatically. The Public Advocate urges the full reinstatement of these resources to the Director of Mental Health.
- There needs to be a transparent and independent process measuring and monitoring the actual impact of the new reforms on the lives of people with a mental illness/psychiatric disability, to ensure that the policy vision articulated by our national and State leaders is translated into real outcomes for people. A common criticism of Australia's mental health system, reported to the 2005 Senate Select Committee on Mental Health, was that the progressive policy vision of the National Mental Health Strategy has not been implemented fully, and thus is perceived by many to have failed.[51] New visions, new policies and new funding are essential and are welcome. However history has shown that alone, these will not repair historic systems failure in the absence of committed implementation.
- The capacity of both levels of Government to ensure whole-of-government responsibility for the well-being of people with a mental illness or psychiatric disability. This will require the active involvement of (among others) the

disability, housing, employment and training sectors; the non-government sector; consumer and carer advocates; and general practitioners and private psychiatrists.

- The Government's commitment to safeguarding the rights of people accessing mental health services, particularly involuntary patients. There appears little evidence to date that the Allied Person provisions of the *Mental Health Act 2000* have acted as a potent safeguard of patient rights. Queensland Health is strongly encouraged to consider introducing independent, professional advocacy for people accessing mental health services. There are advocacy models in other jurisdictions. The Office acknowledges and supports the greater use of consumer and carer consultants throughout mental health services. These workers, however, are employees of the district mental health service and, as such, have a clear conflict of interest.

Advocacy is sometimes viewed with suspicion, and seen as a likely source of discomfort and criticism. However, it is more likely that independent and professional advocacy will help local services identify and address problems *at the local level* and as *they arise*, and hence avoid scandal and the need for public inquiries at a later time. Standard 1.6 of the National Standards for Mental Health Services, endorsed by all Australian Health Ministers, states that:

> *Independent advocacy services and support persons* [should be] *actively promoted by the* [mental health service] *and consumers* [should be] *made aware of their right to have an independent advocate or support person with them at any time during their involvement with the [mental health service].*[52]

4.2.2 Submissions by the Public Advocate

In July 2005, the Public Advocate made a submission to the Queensland Health Systems Review on systemic issues impacting on the mental health system. This submission built upon three others the Office had previously made to:

- the Bundaberg Hospital Commission of Inquiry (June 2005)
- the Queensland Minister for Health, in the context of the Senate Select Committee on Mental Health (May 2005)
- the Senate Select Committee Inquiry into Australian Mental Health Services (May 2005).

These submissions discussed a range of systemic issues, and made a number of recommendations.

- Queensland Health's systemic failings on discharge planning were discussed, (particularly the referral of adults with a mental illness to private residential services[53]).
- The advocacy provided by the Public Advocate on the issue of discharge, extending over several years, was documented. Queensland Health's response to this advocacy was reported, and its failure to acknowledge and remedy issues of systemic concern was highlighted.
- Queensland Health's failure to fully and consistently implement mental health policy across its 39 health districts was examined.
- The need for greater partnerships and cross-government delivery of services was discussed, particularly with respect to the Queensland Government's mental health and psychiatric disability programs.
- The Public Advocate supported the continuing moves within Queensland Health to create recovery-focused services.

- In analysing mental health expenditure, the Public Advocate recommended that Queensland mental health funding be increased to at least the national per capita average.
- The Office advocated for the need to develop a comprehensive program of community-based psychosocial rehabilitation services, based in the non-government sector.

The full text of the submission can be found at the Public Advocate's website.[54]

At the time of writing the Queensland Government had just announced its machinery of government changes, which will see some responsibility for mental health relocated from the Health Portfolio to the Communities/Disabilities portfolio. The full details and implications of this structural shift are not yet known. The Public Advocate looks forward to contributing to the ongoing reform of mental health and psychiatric disability services in Queensland.

4.3 The use of restraint in mental health facilities

The use of restraint is commonplace in mental health settings.[55] It is broadly defined as a restrictive intervention that relies on external controls to limit the movement or response of a person.[56] There are three broad types of restraint: physical, mechanical, and chemical. [57]

Restraint has long been used within the mental health system as a routine, although unfortunate, part of psychiatric treatment. Some attention has been given to the method of its application: for example, legislative provisions,[58] clinical guidelines[59] and training programs are in place in various Australian jurisdictions, governing the approval, use, and monitoring of restraint. However, less attention has been paid to reducing the use of restraint, targeting those factors which precipitate aggressive behaviour in the first instance and which, if addressed, may reduce its use. Some of these factors include the physical design of mental health units, a service culture that is dismissive of patients' basic rights and fails to involve them in treatment decisions, and a lack of staff training and skills to deal appropriately with 'difficult behaviour' or 'aggressive patients'.[60]

Restraint is frequently a degrading experience for people with a mental illness. The psychological distress caused can impact on a person's therapeutic relationship with the treating team, and their trust in the mental health system.[61] Similarly, the restraint of a struggling patient will have resounding effects upon relatives, other patients, and the staff involved.

However, perhaps the greatest risk of restraint to people with mental illness is to their physical health and safety. The Public Advocate has been advised that at least three adult Queenslanders have died in recent years while being restrained in mental health facilities. In May 2006, the Public Advocate was granted leave to intervene in a coronial inquest into one of these deaths. (Refer to section 8.1 for details). In addition to these deaths, many more people are likely to have been adversely affected by restraint and seclusion.

The Public Advocate notes that the use of restraint in mental health settings is now firmly on the national mental health policy landscape. The National Mental Health Working Group, in its recent publication *National Safety Priorities in Mental Health: a national plan for reducing harm*, identified restraint and seclusion as one of four priority areas for improving the safety of people in the mental health system. This report recognised that there is a close relationship between the use of restraint and serious adverse events.[62] The Plan, endorsed by the Australian Health Ministers' Advisory Council in October 2005, has as an objective:

> *Reducing use of, and where possible eliminating, restraint and seclusion.*[63]

The National Plan considers the need for a systems-oriented approach to reducing restraint, seclusion and associated adverse events, along with the creation of a non-punitive culture that rewards incident reporting and supports continuous quality improvement.[64]

The Public Advocate acknowledges and supports these objectives, and urges that priority be given to their implementation in all mental health settings across the State.

4.4 Suicide deaths of people with a mental illness

On 14 June 2006, the Public Advocate was given leave to intervene in a coronial inquest investigating the suicide deaths of three people with a mental illness, each of whom had recent contact with a health or mental health service. The Public Advocate provided an Issues Paper, identifying areas of systems failure in the three deaths, and making specific recommendations for systems change. (For more information, refer to section 8.1.2). It is expected that this issue will be addressed at greater length in next year's Annual Report.

This intervention builds on the Public Advocate's concerns about the suicide deaths of people with mental illness which were documented in its 2003-04 Annual Report (section 10.4.2) and 2004-05 Annual Report (section 5.5.17). The Public Advocate has also become a minor research partner with the Australian Institute for Suicide Research and Prevention and Queensland Health, in a project to prevent suicide for people exiting mental health services. (Refer to section 11.5 for details).

4.5 Critical mental health incidents involving police

Crisis incidents involving people with a mental illness, and to which police respond, have been of interest to the Public Advocate for some time, primarily as a result of police shootings of people with a mental illness. In March 2005, the Office released a Discussion Paper, *Preserving Life and Dignity in Distress: responding to critical mental health incidents*. This paper was intended to contribute to the significant joint work already undertaken by Queensland Health and the Queensland Police Service.

In its 2004-05 Annual Report, the Public Advocate commended the Queensland Government for funding the mental health crisis intervention team project, which followed a successful pilot project in the Logan district. The Office is informed that some progress towards implementation of this project has been achieved in 2005-06.

The Public Advocate will seek to more actively inform herself of progress achieved in this area during 2006-07. The Public Advocate has been granted leave to intervene in coronial inquests being held into the shooting deaths of four people with a mental illness. The Public Advocate's involvement in these inquests will provide opportunity for the adequacy of the current project to be considered, and for submissions to be made to the Coroner about it.

The Office will take an interest in the extent to which the current project addresses the recommendations made in the Public Advocate's 2005 Discussion Paper,[65] and is being consistently implemented across the State.

4.6 Employment of people with a mental illness

During 2005-06 the Office developed an interest in the relationship between employment and treatment for, and recovery from, serious mental illness. Empirical research is emerging which highlights the important role that work and vocational rehabilitation have to play in mental health treatment and recovery.[66] The Office is aware that a number of pilot projects are underway across Australia to better integrate psychiatric treatment and vocational rehabilitation components, and proposes to take a greater interest in this work over the coming year.

4.7 Re-gazetting of 'The Park'

'The Park – Centre for Mental Health' is an authorised mental health service gazetted under section 495 of the *Mental Health Act 2000*. On 16 June 2006, this service was re-defined to include two units of Disability Services Queensland's Basil Stafford residential facility, also located nearby at Wacol. This effectively means that people may be treated as involuntary mental health patients at the two DSQ units under the *Mental Health Act 2000*.

The Public Advocate has been informed that this decision was linked to the lack of alternative provision in Queensland for the involuntary detention of people who have an intellectual disability but no mental illness, and who exhibit seriously 'challenging behaviour'. In some cases, detention within an authorised mental health service might have serious adverse impacts.

The Public Advocate has raised serious systemic concerns about this issue. Specifically, the precedent set by this action is troubling. The apparent possibilities for intrusion into the residential arrangements of mental health patients, or of people with a disability, are concerning. It seems it would be possible to gazette almost any facility, or indeed any residential premises, as part of a mental health service.

The Public Advocate's concerns have been acknowledged and are shared by representatives of Queensland Health. The Public Advocate has been informed that it is not the intention or desire to gazette further residential facilities in this way and consideration is being given to finding solutions by Queensland Health and DSQ. This issue is also linked to the Queensland Government's current review of legislative and service options for the voluntary and involuntary care of adults with intellectual or cognitive disability who exhibit severely challenging and threatening behaviour, and who present a significant risk of harm to themselves or the community (Refer to sections 1.5.2, 3.1 and 3.2).

Senior Research Officer Lindsay Irons

5. The Criminal Justice and Corrective Services Systems

5.1 The corrective services system

5.1.1 Discussion Paper

The Office has maintained its interest in the position of people with impaired capacity who are detained in the corrections system.

Queensland Corrective Services (QCS) undertook a review of the efficacy and efficiency of the *Corrective Services Act 2000* in 2005. The Office identified a number of issues in its Discussion Paper, *Issues for People with a Cognitive Disability in the Corrections System*, issued in May 2005 and available on the Public Advocate's website.[67] The purpose of the paper was to inform the legislation's reviewers about issues that are important for offenders with impaired decision-making capacity. The issues identified included:

- identification of people with impaired decision-making capacity, and their referral for appropriate assessment
- collection of reliable and accurate Queensland data,[68] particularly about groups on which there is little information: people with acquired brain injury, long-term mental illness, or dementia
- robust, independent and outcome-based evaluation of the initiatives, to fairly assess progress and identify service gaps
- appropriate training and education for staff about impaired decision-making capacity
- multi-agency service responses: government and non-government agencies collaborating
- all aspects of program development and service delivery should be integrated – this includes disability, housing, health and corrective services components.
- intensive transitional support prior to prisoner release.

Relevant material from the Discussion Paper on acquired brain injury was published in the national magazine of the Brain Injury Association of Australia in their Summer 2005 edition.

The *Corrective Services Act 2006* was passed on 25 May 2006 and commenced on 28 August 2006.

5.1.2 Queensland Corrective Services Initiatives

QCS has introduced a number of strategies to enhance service delivery for people with decision-making disability. These initiatives are commended and include:

- an integrated offender management system including a whole-of-sentence planning approach (which matches interventions and supports against assessed level of individual need and re-offending risk)
- multi-agency responses (including engaging government and non-government service providers appropriate to the needs of individuals)
- the provision of individualised release preparation support
- a review of some of QCS' key offender intervention programs by a specialist in the field of intellectual disability. The results of this review have led to changes in programs to better cater for the needs of these offenders.

The Office is pleased to note two particular initiatives, given their potential to assist offenders with impaired decision-making ability. The first is a whole-of-government concern with prisoner 'through-care'. 'Through-care' aims to provide a continuity of care and service provision from prison to community release, with the goal of reducing re-offending.

Second, in its budget papers for 2005-06,[69] QCS announced the trial of a multi-agency case management approach. This aims to reduce the risk of re-offending, particularly for high-risk offenders. Under this pilot, QCS collaborates with other government agencies to supervise offenders in the community, in order to maintain community safety and facilitate the successful completion of the offender's community supervision order (without a breach).[70] Successful completion is often a useful indicator of how people will respond after the supervision order is at an end. The process involves regular meetings with service providers and clear protocols for communication, leadership and responsibility across agencies.

The Office will take an interest in monitoring the legislative changes and the above initiatives, particularly with respect to the outcomes of their evaluations.

5.2 The criminal justice system

The Public Advocate welcomes initiatives which aim to address the needs of offenders with impaired decision-making capacity before they enter the corrections system. The Public Advocate considers that these programs have the potential to break the cycle of imprisonment, enhance community safety and provide a better future life for the offenders.

5.2.1 Court diversion strategies

A range of court diversion initiatives are currently being trialled in Queensland. These were not formally evaluated during 2005-06, and thus their success cannot be reported, except anecdotally. The Office has taken a particular interest in monitoring the 'Special Circumstances List' and 'Homeless Persons Court Diversion Project'.

Court diversion generally uses a case-based approach to the rehabilitation needs of offender groups, and seeks to address the underlying cause of their offending behaviour. This means that an offender initially appears before a criminal court in the usual way. However if the criteria are met, they are diverted away from the mainstream trial and sentencing process. This approach appears to have attained considerable success in other jurisdictions and in Queensland's Drug Court.[69A]

Diversion options are not 'soft on crime'. The requirements on offenders are onerous. The process involves the person coming to understand the impact their offending behaviour has for themselves and others, and undertaking what is often a difficult and confronting long-term plan to address the behaviour. This requires a commitment from the person, who is subject to regular monitoring and reporting. A lack of bona fides is quickly identified. In the case of failure to complete the diversion program, people are returned to the mainstream criminal justice system. Other jurisdictions report that such schemes are highly protective of both the public good and offenders' personal advancement. Public safety is enhanced, as these schemes lead to reduced recidivism rates, lower levels of imprisonment, better life outcomes for individuals, and less need for formal service responses.

5.2.2 The Homeless Persons Court Diversion Project and the Special Circumstances List

The aim of the 'Homeless Persons Court Diversion Program' and the 'Special Circumstances List' in the Brisbane Magistrates Court is to assist people charged with minor offences to access services that address their accommodation, health, substance abuse and other unmet needs which may contribute to their offending behaviour. Both of the initiatives apply to simple offences which are not contested. These include public nuisance, begging, public drunkenness, trespass, wilful exposure, and failure to follow a police direction.

The 'Homeless Person's Court Diversion Program' is part of the Queensland Government's *Responding to Homelessness* Initiative and is funded as a two-year pilot program. A court liaison officer has been appointed to assess, support and refer eligible defendants to government and non-government service providers. Magistrates are encouraged to consider whether offenders who appear before them are eligible for the program and refer appropriate people to the liaison officer for assessment.

The 'Special Circumstances List' operates weekly in the Brisbane Magistrates Court. In appropriate cases people with special needs (including homelessness and/or impaired decision-making capacity as a result of mental illness, intellectual disability or brain/neurological disorders) are linked to services that can assist them with their offending behaviour. This list is heard weekly.

The Office has taken a particular interest in these pilot initiatives. Staff have observed hearings within the 'Special Circumstances List', and spoken with offenders, staff and judicial officers. Offenders report feeling respected, valued, and genuinely surprised by the interest shown by the court in their broader needs. They have also demonstrated some determination to take responsibility for their future lives. Service providers have confirmed this positive attitude and actions from people involved in the program. Staff and service provider representatives involved in the program are informed and experienced in disability issues.

The Office looks forward to the evaluation of both initiatives.

5.2.3 Queensland Magistrates early referral into treatment program

During 2005-06, a court diversion program was developed for use in the Magistrates Court. It deals with repeat drug-dependent offenders, particularly those who have committed property, theft, public order or traffic offences. A pilot program commenced at the Maroochydore and Redcliffe Magistrates Courts in August 2006, and will run for two years. It is funded by the Commonwealth Department of Health and Ageing, and is administered by Queensland Health.

5.2.4 Advocacy and court diversion strategies

The Office strongly supports initiatives which endeavour to divert offenders with impaired decision-making capacity from the mainstream criminal justice system and into appropriate rehabilitation programs. In its advocacy, attention has been drawn to the following:

- eligibility for court diversion should be based on a functional definition of disability in line with the *Disability Services Act 2006*[71]
- court diversion programs will only succeed if there are sufficient and appropriate services to cater for the needs of people who are diverted
- programs must address offender needs, rather than expecting offenders to fit into limited and generic programs[72]
- high-level coordination and service agreements are required across the government and the non-government sectors, to achieve shared responsibility for the development of service options. Relationships at a local level are not sufficient, as local departmental representatives do not drive program development and reform.

- court diversion programs, to be successful, must be appropriately resourced.[73] Further, the operational success of such programs should not rely on the expertise and commitment of individual staff. The expertise must be embedded across the system.
- diversionary program evaluation should assess whether real improvements have been made in the lives of offenders with impaired capacity. Program refinement, or the creation of new services, may be indicated.

Having good policy and legislation in place is only the first step in the process of according protection and providing services for vulnerable people. Real change only occurs when the legislation and policy are implemented. This requires committed leadership and rigorous evaluation, with a view to embedding continuous improvements.

5.3 Other initiatives

5.3.1 Initiatives of the Director of Public Prosecutions (DPP)

Over the past year, the DPP has recognised the needs of vulnerable people as victims, witnesses, and perpetrators. The Office is advised that staff now receive training in disability issues.

The Office is pleased to note that the DPP also gives consideration to people with acquired brain injury. This group, who are often not identified within the court system, frequently have needs and issues different from those of people with mental illness or intellectual disability.

The DPP is also more proactive in its use of modified settings for the provision of evidence by vulnerable witnesses. New procedures are in place to ensure that prosecutors are made aware of their needs, and can introduce appropriate responses in a timely way. These include the use of a screen to obscure the witnesses' view of the accused; the exclusion of people from the court room other than those specified by the court; permitting an approved 'emotional support' person to be present during the evidence; and the witness giving evidence from another room, or by pre-recording of evidence.

The DPP is commended for these initiatives and encouraged to continue staff awareness training about issues for this vulnerable group, and the importance and usefulness of these practices.

5.3.2 Disability Law Project

Another initiative that merits acknowledgement is the Disability Law Project, a project of the Toowoomba Advocacy and Support Centre.[74] This provides legal representation, advice and support to people with a mental illness, acquired brain injury or intellectual disability who have been charged by Police and are to appear before the Toowoomba Magistrates Court. Patients on a forensic order may also be entitled to legal representation before the Mental Health Review Tribunal and/or the Mental Health Court. The Office commends the Department of Justice and Attorney-General for its continued funding of this important service, and would support the expansion of similar services across the State.

6. The Aged Care System

6.1 Issues of ageing

Issues of ageing remained prominent for the Office. In July 2005, a senior research officer presented a paper at the ACROD Conference on Ageing and Disability. There were two key aspects to the paper. First, it considered the impact of an increasing number of aged people with disability on existing models of aged care. Second, it considered issues concerning numbers of people with lifelong disability and impaired capacity.

Traditional forms of aged care, in which people spend their last years in formal aged care facilities provided by the Government, may not be fiscally sustainable, given the increasing numbers of frail aged, and the projection that this trend will continue. There have also been some questions raised about the appropriateness of traditional models of aged care, especially the focus in aged care on medical models. A variety of introduced initiatives assist people to remain in their own homes with appropriate support.

The second issue is a relatively new phenomenon. People with a lifelong disability now have life expectancies close to those of non-disabled people. For the first time, families and society are considering life for people with lifelong disability without the care of their parents, who may have taken responsibility for the care of their adult child for decades. The Office's interest in this issue has lead to the development of a Discussion Paper which is expected to be released in 2006-07. There is concern that increased demand for services for older adults with lifelong disabilities will cause undesirable, ill-planned and crisis-driven responses. Lifestyle decisions are best not left to chance; thoughtful preparation and planning for the future well-being of a vulnerable individual is critical. The systemic challenge is around the creation of policies, practices and mechanisms that facilitate and support this happening. (Refer also to sections 10.3 and 11.1).

6.2 Elder abuse

During the year, the Public Advocate made submission to the Queensland Minister for Health on the proposed Commonwealth/State measures for responding to elder abuse.

Abuse of older people is often a hidden problem. Abuse occurs in institutional and residential settings, but often it also occurs in private homes. In February 2006 allegations of abuse of elderly residents in aged care facilities were aired in the Australian media. Incidents of both sexual and physical abuse, implicating staff as perpetrators were alleged. Shortly after, the Commonwealth Minister for Ageing, Senator The Hon. S Santoro, called a special meeting of the national Aged Care Advisory Committee to explore solutions.

While the Office welcomed the initiative, it recognised that allegations of sexual abuse have the potential to overshadow and dominate the search for informed responses. Sexual abuse is very serious: however, it accounts for only a small percentage of the abuse that is thought to occur. Developing a comprehensive and robust approach to confronting abuse requires a full appreciation of both the individual and systemic characteristics of this serious issue.

In brief, a Joint Communiqué was issued following an April 2006 meeting between the Commonwealth, State and Territory Ministers responsible for Aged Care and Ageing, which included a range of agreed measures to deal with allegations of abuse. It was agreed that there was a need to:

- improve the culture surrounding reporting of abuse, so that people who come into contact with aged care residents understand their responsibilities and their duty to act on abuse cases
- improve training and support within the industry to ensure compliance with existing incident reporting mechanisms

- strengthen incident reporting for a category of serious offences, such as sexual or physical assault, whereby residential aged care providers will be required to pass on complaints to the appropriate agencies for investigation
- ensure protection for whistleblowers within the residential aged care industry.

In addition, the Communiqué gave broad support for police background checks on aged care staff and volunteers, as well as an increase in random spot checks at aged care facilities.

The submission of the Public Advocate supported measures for:

- creating cultural change within the industry
- enhancing training and support of the industry
- strengthening whistleblower protection
- strengthening background/police checks of staff.

However, the following concerns were raised by the Public Advocate about the direction of proposed solutions:

- a focus on the individual, rather than systemic, causes of abuse and neglect
- a preference for reactive, rather than proactive measures
- a focus on abuse in residential facilities only
- the potential impact of the measures on privacy and dignity
- concerns about the effectiveness of mandatory reporting.

Further, the Public Advocate proposed a number of specific strategies for consideration, including:

- a community visitor scheme, similar to that which operates under Queensland's guardianship regime (as distinct from the Commonwealth community visitor scheme, the focus of which is companionship)
- a comprehensive recording system for the incidence of elder abuse
- a review of the effectiveness of random inspections of aged care facilities
- strategies to target the inappropriate use of chemical restraint in residential aged care facilities
- a formal investigation into the use of physical restraint, with the findings to be made public
- strengthening the complaint procedures
- establishing and strengthening advocacy services for older people
- registration/licensing of aged and social care workers

The Public Advocate has been advised that the Queensland Government has adopted a zero tolerance approach to elder abuse by introducing mandatory training for all staff that come into contact with elderly people residing in its 21 aged care facilities. Currently, State residential aged care facilities provide for around 5% of the total number of aged care beds available across Queensland.

Other initiatives currently underway in Queensland's 21 aged care facilities include:

- increased training on the understanding and identification of what constitutes abuse
- improved training and support within the aged care industry to ensure compliance with existing incident reporting mechanisms
- strengthening incident reporting
- the introduction of criminal history checks for all health employees including those in State aged care facilities.

It is anticipated that this area will be the subject of on-going advocacy. (Refer also to section 2.1.2, 1.6 and 11.2).

7. The Housing System

7.1 The importance of housing

Housing issues, and the need for a real home, continue to be important in the lives of people with impaired capacity. As discussed in previous Annual Reports,[75] systemic issues relating to housing persist, despite recent new initiatives and funding increases from the Queensland Government. (One such new initiative is the Younger People in Aged Care project, discussed at section 3.7). The availability of affordable housing, and the support which is necessary to help people maintain their housing, continue to be problematic.

The Public Advocate's 2003-04 Annual Report examined the importance of having a real home for people with impaired capacity.[76] Without a home, a person's quality of life will be significantly diminished, and their exposure to risk of abuse, neglect or exploitation higher. This should come as no surprise. Stable and affordable housing is, in many ways, a cornerstone of communities. Importantly, our home is where we can retreat from the world: a place of safety, love and comfort.

For people with impaired decision-making capacity, there are additional benefits, including:

- greater rates of recovery from mental illness, and a protective factor in interrupting the cycle of hospitalisation[77]
- reduced recidivism for people who have been imprisoned[78]
- a stable base for the sustained provision of services[79]
- opportunities for building relationships with others in the community, enhancing a person's protection from abuse and neglect, and reducing their reliance on formal services.

7.2 Queensland Government's Homeless Strategy

In last year's Annual Report, the Public Advocate commended the Queensland Government on its cross-government responses to homelessness.[80] The component programs of this strategy attempt to target homeless people with a wide variety of needs, including people with impaired capacity. In its budget for 2004-05 the Queensland Government committed an additional $235.52 million to boost responses to homelessness. This funding was earmarked to build on existing initiatives and establish new and innovative ones.

The various initiatives of the homeless strategy were outlined in last year's Annual Report. The Office understands that some progress towards achieving its goals has been made in 2005-06.

7.3 Private residential services

The Office has continued its monitoring role of the Queensland Government's residential services reform, primarily via its participation in the various residential services stakeholder committees. The Department of Communities continues to carry responsibility for the coordination of this strategy. Issues of particular interest to the Office have been raised at coordination meetings.

- How can residents be assisted to have a greater voice in the reform process?
- How can the Government ensure that the reform, and its component parts, receive robust and independent evaluation, necessary for community and sector confidence in the reform process?
- Is the closure of residential services expected to continue? If so, what are the long-term implications for residents, particularly those with disabilities, who are likely to experience reduced access to this form of accommodation?

- How can the Government address the diminishing viability of the sector, while improving the standards of care? It is noted that in other jurisdictions, a range of innovative mechanisms that improve both quality of care and industry viability have been trialled.
- How can the concerns raised by both resident advocates and industry representatives about medication management be addressed? The concerns of the stakeholders, first tabled at the Residential Services Stakeholder Advisory Committee in 2004, indicated that the potential mismanagement of medication places vulnerable people at risk. To date, the Office is not aware of any progress on this issue, other than the introduction of basic accreditation standards under the *Residential Services (Accreditation) Act 2002*.

In addition, the broader issue remains: for highly vulnerable people with disabilities who are inappropriately placed in hostels or boarding houses, what alternative models can be developed?

7.3.1 Achievements

The Public Advocate acknowledges that progress has been made on existing programs, and that some new initiatives have begun in 2005-06. These include:

- Approval was granted for financial assistance from the Queensland Government to support compliance with the enhanced fire safety standards. The Office will seek to report in the 2006-07 Annual Report on the success of this initiative.
- Funding has been allocated by the Queensland Government for the provision of mentoring, training and support to owners and staff of supported accommodation services, in order to enhance standards of care and facilitate greater compliance with regulatory measures.
- Disability Services Queensland (DSQ) and Queensland Health have initiated a joint research project to assess and quantify the support needs of residents, including those in Level 1, 2 and 3 services. At the time of writing, the project is due to proceed to tender. The Public Advocate participates on the Steering Group.

7.3.2 Resident Support Program (RSP)

The Office continues to monitor and support the implementation of the Resident Support Program, and acknowledges that increased funding was made available in 2005-06 to support the expansion of this project. The RSP is now delivered in six regions throughout the State. This brings the total funding to $2.6 million (DSQ component) and $700,000 (Queensland Health component).

The Public Advocate acknowledges that industry representatives continue to raise concerns about aspects of service delivery within the RSP program. These issues have been raised with the Residential Services Stakeholder Advisory Committee.

7.3.3 Closures and significant changes

The *Residential Services Significant Changes Response: Interagency Protoco*l was formally endorsed in 2005-06, to respond to significant changes in the residential services sector. This protocol supplements the Residential Services Closures Protocol.

Community feedback suggests that, in the main, the protocols work well, with improved housing and support outcomes for many affected residents. The ongoing leadership of the Department of Housing is acknowledged in this process.

In addition, DSQ has allocated recurrent funding for adult lifestyle support packages to enable people with disabilities to move out of private residential services and into the community. (This includes those

affected by closures or significant changes). To date, some 90 people in total have benefited. This is a significant achievement: the allocation of this support makes possible a better quality of life for vulnerable residents, now living in their own homes. Both DSQ and the Department of Housing are to be commended.

7.3.4 Protocols – abuse and neglect in residential services

During 2005, the Department of the Premier and Cabinet did some initial work with respect to the identification of, and response to, allegations of abuse and neglect of people with a disability. This covered people residing in all forms of accommodation, and was not specific to private residential services. A commitment was made to develope protocols for the coordination of investigations into allegations of abuse and neglect, specifically in residential services. This would include provision for information-sharing, referral and communication pathways, and clear designation of roles and responsibilities.

The Public Advocate is advised that a protocol has been developed between the Adult Guardian and the Community Visitor Program. This protocol addresses allegations of abuse and neglect that is identified by community visitors in level 3 residential services. The Adult Guardian is also working on similar protocols with other inspection agencies.

However, to date there has been no progress on the development of a coordinated, cross-agency protocol for responding to abuse or neglect across all residential services (levels 1, 2 and 3). The Public Advocate notes the continuing vulnerability of many residents in this sector, and strongly encourages the advancement of a coordinated protocol by the Residential Services Stakeholder Advisory Committee.

7.4 Substitute decision-making for accommodation decisions

During 2005-06, concerns were brought to the Public Advocate in relation to substitute decision-making practices for accommodation decisions. A number of different concerns were expressed:

- service providers relocating adults with impaired capacity, without the involvement or consent of formal or informal guardians
- service providers applying pressure to formal or informal guardians to agree to a proposed relocation of their family member
- adults with impaired capacity being placed at risk of abuse, neglect or exploitation by proposed relocations
- service providers relocating new co-tenants into existing households, without the involvement or consent of the formal or informal guardians of the existing tenants.

The Public Advocate sought to better understand these situations, and applied some limited advocacy efforts around them. In the process, the Public Advocate identified a number of broad systemic pressures which impact on housing-related decision-making.

- The growing and unmet demand for affordable housing is having a significant impact on people with low incomes, including people with a disability.
- Some disability service providers across the State continue to face financial viability problems.
- There has been a significant increase in demand on the guardianship regime in recent years.
- As the parents of adults with a disability age, there is a growing number of people with no family or informal support networks to participate in decision-making processes.

The Public Advocate also notes the view, in some parts of the sector, that some accommodation decisions do not require the involvement of formal or

informal decision-makers. This argument is made for a number of reasons:

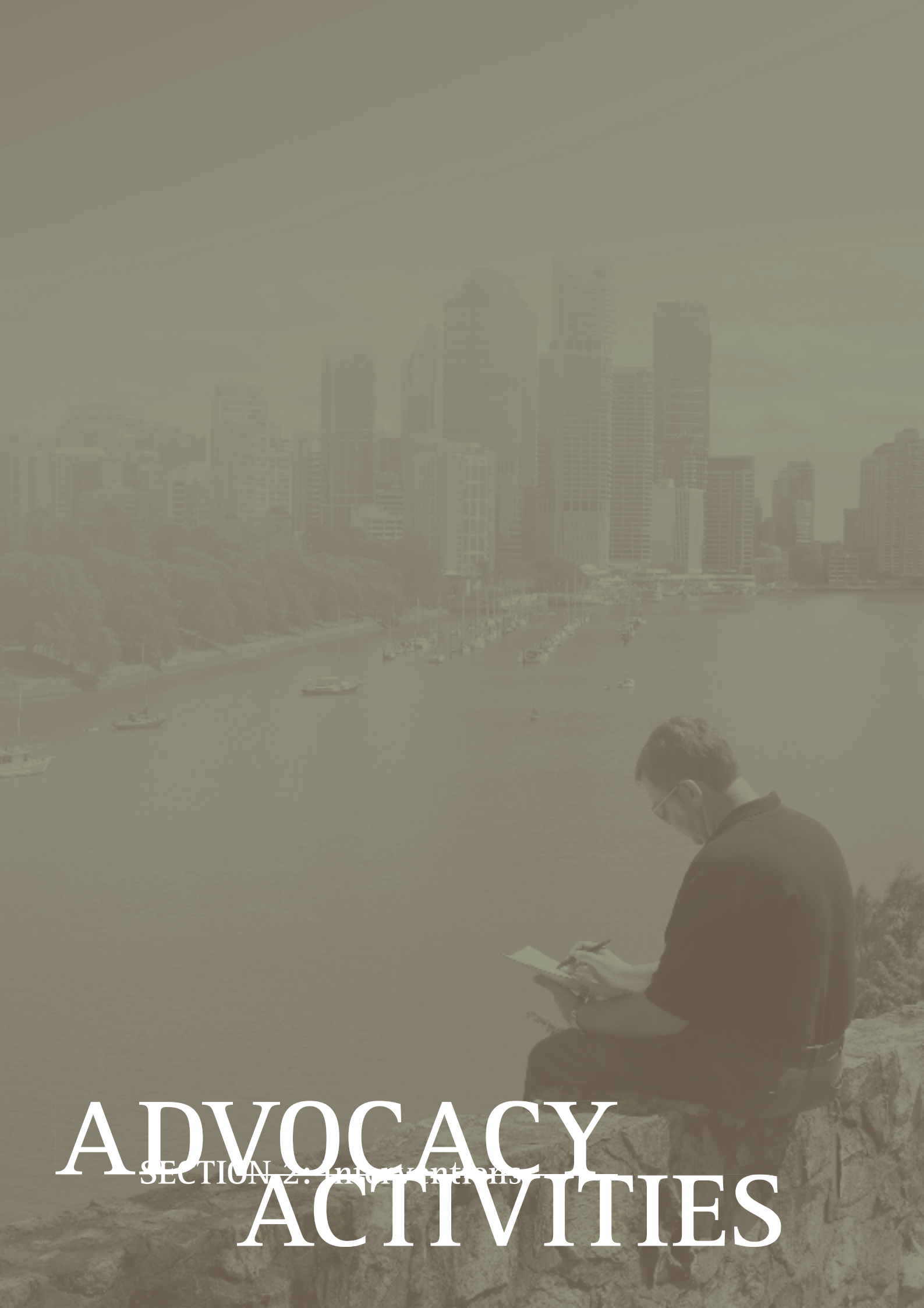
- A particular decision may be seen as so 'straightforward' and 'uncontroversial' as to not require the involvement of third parties. (However, who makes the judgement between a 'simple' and a 'complex' decision? How is this decision made?)
- In some cases, there is seen to be no inherent conflict of interest in a service provider making a housing-related decision for a client, and therefore no need to involve formal or informal guardians. (However, what safeguards are there to ensure that the adult's rights are primary in the decision-making process, vis-à-vis the service's financial pressures?)
- Where neither informal networks nor formally-appointed guardians exist, it may be considered unnecessary or impossible to involve third parties, or to seek proper consent. This highlights the particular vulnerability faced by adults with impaired capacity who have no family, support network or guardians in their life.
- It may be considered unnecessary or impractical to seek the formal appointment of a guardian, if there is no 'real decision' to be made. Debate arises about whether a guardian is necessary when only one option is presented, if the guardian's role is limited to choosing between *available* options.

The Public Advocate also acknowledges that a variety of policies and practices are currently in place across the State in relation to substitute decision-making, for housing-related decisions, and the provision of disability support. For example:

- The Public Advocate is informed by the Department of Housing that some 800 Queenslanders currently live in shared housing arrangements in departmental properties, and that tenancy agreements are in place for all of these people. The Office is also informed that the Department of Housing has policies in place for substitute decision-making processes in relation to housing-related decisions.
- DSQ informs the Public Advocate that the Accommodation Support & Respite Service (AS & RS) does not make accommodation decisions on behalf of adults with impaired capacity, but that policies and procedures are in place for the involvement of formal or informal substitute decision-makers, where they exist.
- The Public Advocate is informed that both departments are working towards creating a joint statement of agreement, within the context of the existing DSQ/Housing Memorandum of Understanding, for consistent substitute decision-making with respect to accommodation decisions.
- There are also significant numbers of adults with impaired capacity being supported in the non-government sector, and there is likely to be a myriad of policies and practices in place in this sector regarding decision-making processes for housing-related decisions.

This issue is likely to be of continuing interest to the Public Advocate in the coming year, particularly with respect to:

- the way in which established policies and procedures are implemented – the way in which the decisions, and the decision-making process, impact on adults with impaired capacity and are experienced by their formal or informal guardians
- the consistency of policy, and its implementation, across the State and across the government and non-government sectors
- the decision-making processes in place for those adults with impaired capacity who have neither formally-appointed guardians nor informal support networks, and who are therefore particularly vulnerable.



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ADVOCACY ACTIVITIES

SECTION TWO reports on advocacy activities through interventions in proceedings and inquiries by the Office for 2005-06.

Section 210 (2) of the *Guardianship and Administration Act 2000* provides for intervention in proceedings and inquiries.

210 Powers

(1) The public advocate may do all things necessary or convenient to be done to perform the public advocate's functions.

(2) The public advocate may intervene in a proceeding before a court or tribunal, or in an official inquiry, involving protection of the rights or interests of adults with impaired capacity for a matter.

(3) However, intervention requires the leave of the court, tribunal or person in charge of the inquiry and is subject to the terms imposed by the court, tribunal or person in charge of the inquiry.

8. Legal Interventions

8.1 Coronial inquests

Under the *Coroners Act 2003*, Coroners are empowered to make comments about systemic matters in relation to public health or safety and ways to prevent deaths from occurring in similar circumstances in the future. Accordingly, the Public Advocate will sometimes seek leave to intervene in matters before the Coroner,[81] as this provides opportunities for systemic issues to be explored before the Coroner. This may serve to expand the range of recommendations about systemic issues which are ultimately made by the Coroner. This is considered appropriate because:

- It is difficult to imagine a worse outcome for a person following exposure to a system than death.
- Where there are systemic issues involved in a person's death, it is likely that these same issues are also impacting on a much larger number of people, albeit with non-fatal, though potentially serious, life consequences.
- Deaths have the capacity to undermine the public confidence in relevant systems, such as the mental health system, and in the ongoing process of reform.
- The circumstances surrounding a death often highlight a number of significant systemic issues. Where there has been a death, it is likely that several systemic issues have coalesced, which have ultimately contributed to the person's death. Thus, an examination of the circumstances around the death may shed light on a range of systemic issues.

In practice, the Public Advocate's involvement will occur only in the most significant cases.

Interventions must be strategically chosen for the potential value they can bring to improving the rights and lives of people with impaired capacity.

In early May 2006, The Public Advocate met with the State Coroner. Following the discussions, all potential Coroners (including regional Magistrates, who have coronial functions) were advised of the Public Advocate's interest in involvement in appropriate matters which involve serious systemic issues. It was also discussed at the meeting that the form of intervention in an inquest may vary from case to case, depending on the issues under review and the resource constraints of the Office at the time. In some cases, the Public Advocate may wish to attend the hearing and cross-examine all or some witnesses. In other cases, her delegate or representative may attend for all or part of the hearing; information may be presented pertaining to relevant systemic issues; or an Issues Paper provided in relation to the systems issues and recommendations for change.

In each matter, the Public Advocate will discuss her proposed method of involvement at pre-hearing conferences and directions hearings for the Coroner's consideration, to ensure that the involvement of the Office does not disrupt the smooth conduct of the hearing.

8.1.1 Death under restraint

In May 2006, the State Coroner advised the Public Advocate of an upcoming inquest in relation to the death of a person with mental illness while under restraint at an inpatient mental health service. The Public Advocate was subsequently granted leave to intervene in the inquest (For more information on the issue of restraint in mental health settings, refer to section 4.3 of this Report). The hearing commenced in July 2006.

Public Advocate Michelle Howard and Senior Research Officer Kathleen Dare

At the time of writing, the coronial hearing had concluded. Written submissions are soon to be furnished to the court. The Coroner's findings and comments will be handed down at a later date. During the coronial process, the Public Advocate identified systemic issues arising from the evidence presented, worked with Counsel Assisting the Coroner to ensure that these issues were raised with the court and that the relevant witnesses were called, and participated in cross-examination.

A number of broad systemic issues were identified including issues about:

- the use of physical/mechanical restraint
- the use of rapid tranquilisation
- the management and support of patients who are deemed to be difficult or aggressive
- the inconsistent application of mental health policy between health districts, an issue that was discussed in some length in the Public Advocate's 2004-05 Annual Report to the Queensland Parliament.[82]

This legal intervention has significantly informed other work undertaken by the Office in relation to mental health systems reform. This matter will be discussed more fully in the 2006-07 Annual Report of the Public Advocate.

8.1.2 Suicide deaths

In June 2006, leave was granted to the Public Advocate to intervene in three inquests which had been part-heard and were being heard jointly. These matters involved the suicide deaths of three people with mental illness, who had presented at a health service or had been discharged from a health service, and committed suicide shortly afterwards. Research shows that people with mental illness are at greater risk of suicide than others, and that this risk is higher in the immediate post-discharge period.

Suicide is a complex issue, and the Public Advocate acknowledges that usually a range of factors contribute to a person's suicide. Some of these factors are systemic in nature; some pertain to the mental health system. However, it is reasonable to advocate that our systems – particularly our health and mental health services – should be able to identify and respond to suicidality.

In these matters, the Public Advocate intervened and provided an Issues Paper on systems issues arising in the context of the deaths and made a number of recommendations for systems change within Queensland Health. These related to:

- mental health assessment
- suicide risk assessment
- carers and informal support networks
- general practitioners
- discharge planning
- community-based supports
- issues affecting the indigenous community
- suicide prevention and reviews of sentinel deaths
- implementing policy and monitoring reform in mental health.

At the time of writing, the coronial findings and comments were not available. The matter will be more fully reported in the Public Advocate's Annual Report for 2006-07. However, the Office intends to convert its submission on these matters into an Issues Paper for wider distribution later in the year. (Refer to section 10.4).

For further discussion see sections 4.4 (mental health system) and 11.5 (research partnership).

8.2 Guardianship and Administration Tribunal intervention

(Refer also to section 1, STOP PRESS *Re WFM*)

8.2.1 Background to issues and facts

In March 2006, the Guardianship and Administration Tribunal provided a notice of hearing to the Public Advocate in relation to a proceeding listed for hearing involving serious systems issues (Refer also to section 1.3 of this Report). The Public Advocate subsequently sought and was granted leave to intervene in the proceedings. The reasons for decision in *Re MLI*,[83] were the subject of media attention. The Public Advocate considered that this case raised significant issues about the operation of Queensland's guardianship regime, in particular, the extent of the powers of a guardian to consent to restrictive practices including detention, seclusion and restraint.

In *Re MLI*, an application was made for the appointment of both an administrator and a guardian for the adult, MLI. MLI had an intellectual disability and exhibited severely 'challenging behaviours'. In December 2005, he had set fire to his home and it was destroyed. At the time of the hearing, MLI was housed in a facility. MLI had 24 hour supervision and two support staff to monitor him at all times.

Due to his propensity to injure himself and others, as well as to destroy property, MLI lived in a stark environment. He lived between two rooms namely his bedroom, which had a simple bed and cupboard, and a living room which had a table and chairs. Whilst MLI could use a small fenced area for exercise he was not free to leave. During his time at the facility he had been involved in incidents involving aggression and property damage. These incidents included assaults on staff members, fire lighting, and property damage. On the two occasions he had community access prior to the hearing, there were incidents of physical aggression.

The Adult Guardian lodged an application seeking advice, directions and recommendations from the Tribunal in relation to the powers of a guardian in circumstances where an adult was being kept in a confined environment, monitored, and was not free to leave. On the basis of the information available, it appeared that the service provider would ask any guardian appointed to consent to the arrangements which amounted to restrictive practices, including detention, seclusion and restraint of MLI.

8.2.2 The significance of the issues

This matter raises issues concerning fundamental rights: in particular, the rights to liberty and bodily integrity. Breaches of these rights have potential consequences in civil and criminal law. Our system of law generally permits incarceration or detention only in very limited circumstances: for example, after a person has been found guilty of a criminal offence or is remanded in custody in connection with a criminal charge; and when the person is lawfully detained under the *Mental Health Act 2000*. Unauthorised detention and use of force against people is viewed seriously under our laws: for example, the *Criminal Code 1899* provides specifically for offences involving deprivation of liberty and assault.[84]

Consideration needed to be given to whether the guardianship regime provided a basis for decision-making by a guardian about restrictive practices (including detention, seclusion and restraint).

8.2.3 The Public Advocate's position

The Public Advocate provided detailed submissions to the Tribunal. However, because of the confidentiality provisions under the guardianship regime, it appears this Report can only refer to those matters in submissions which were subsequently reported in the reasons for decision of the Tribunal. To discuss more would amount to publication of information about a proceeding. Publishing of such information is not permitted without an order of the Tribunal, unless there is 'reasonable excuse'. There is a significant penalty for contravention of the requirement.[85] There is no order that would allow more detail to be provided by the Public Advocate.[86]

The Public Advocate submitted that a guardian appointed under the *Guardianship and Administration Act 2000* (GAA) could not consent to restrictive practices. Specifically, it was submitted that restrictive practices could not be 'health care' under the regime, and nor could restrictive practices or any of them, such as detention, be authorised as another type of personal decision including an accommodation decision.

An accepted rule of statutory interpretation was highlighted: legislation does not abrogate fundamental common law rights in the absence of clear and unambiguous language. General words are insufficient. There are no provisions in the guardianship regime specifically authorising a guardian to make decisions about restrictive practices.

It was also submitted that the GAA should be read as a whole and that the guardianship regime does not provide for detention, seclusion and restraint specifically and only provides for use of force and other coercive measures in specific circumstances. For example, a health provider may use the minimum force necessary and reasonable to carry out health care authorised under the regime. Where this is done, the use of force is not authorised by the guardian but by the legislation itself.

Other parties expressed different views in their submissions to the Tribunal. Some of those submissions are referred to in the Tribunal's decision. As in the case of the Public Advocate's submissions, parts of these views are referred to in the decision. The Public Advocate would not wish to take the risk of misrepresenting partially recorded submissions of others and does not propose to detail them. Interested readers may wish to peruse the reasons for decision.

8.2.4 The Tribunal's decision

The Tribunal posed a series of questions which it then answered. The relevant questions and answers in relation to the systems issues were as follows.

a) *Does the guardian's power to consent to health care extend to consenting to a Behaviour Management Plan which may contain restrictive practices in the circumstances of the current case?*

The Tribunal concluded that a guardian could, in some circumstances, consent to treatment that includes restrictive practices for the treatment of a 'mental condition' provided that:

- this is carried out at the direction, or under the supervision, of a health provider
- it complies with the General Principles and the Health Care Principle of the *GAA*
- it is the least restrictive option available
- it is in the person's overall best interests
- it is consistent with the adult's proper care and protection, and
- it is necessary to maintain and promote the adult's health and well-being.

The Tribunal relied upon the findings in its earlier decision of *Re WMC*[87] to support this view.

The Tribunal considered that a guardian could not authorise as health care, permanent detention. Permanent detention would require a clear legislative basis which is not contained in the guardianship regime.

b) *Can the guardian consent to restrictive practices outside the power to consent to health care?*

The Tribunal concluded that under the guardianship regime, a guardian could not consent to restrictive practices outside of the power to consent to health care.

c) *Does the guardian's power to make accommodation decisions extend to making a decision which may result in a person not being able to voluntarily leave the chosen accommodation?*

The Tribunal decided that a guardian could not do so.

d) *If accommodation is chosen because it can provide the required health care, can a health provider, in accordance with section 75[88] of the GAA, use reasonable force to keep the person in a place, and return them to the place?*

The Tribunal did not make a determination about this as it was not certain MLI was kept at his accommodation at the direction of a health provider. Specifically, it noted that it would be difficult to envisage that permanent detention could be considered an ordinary incident of health care.

e) *Can the guardian use 'reasonable force' if directed to by the health provider in accordance with section 75 of the GAA?*

The Tribunal decided that it was not necessary to decide this issue.

The Tribunal expressed serious concerns about MLI's current arrangements as he was detained for an indefinite period on an uncertain basis without appropriate monitoring except minimal interaction with the guardianship regime. The announcement,

Administration Officer Debbie Barber and Public Advocate Michelle Howard

subsequent to the hearing, (but before the reasons for decision were published) of the review of options for adults with seriously 'challenging behaviour' and the current review of the guardianship regime were noted.

8.2.5 Comment

Currently, there is an apparent legislative 'gap' for adults such as MLI with seriously 'challenging behaviour'. MLI did not have a mental illness as defined in the *Mental Health Act 2000* and accordingly, he did not fall within that regime which provides specifically for detention and seclusion in prescribed circumstances, whilst also providing mandated safeguards for their use including criteria-based assessment as to the applicability of the regime, regular review and record-keeping. The guardianship regime did not cover permanent detention in the view of the Tribunal, although in some circumstances the Tribunal considered a guardian could authorise

restrictive practices (which could include seclusion and restraint, but not permanent detention) as health care. A fuller consideration of the range of issues relevant to service and legislative options relevant to the Review are explored in sections 3.1 and 3.2 of this report.

The Public Advocate is concerned about the wider implications of the decision in *Re MLI*. If a guardian has the power to authorise restrictive practices, including seclusion and restraint as 'health care', it follows that a personal attorney appointed under an enduring power of attorney for health matters, and a statutory health attorney[89] can do the same. While some quasi-supervision of guardians occurs through Tribunal review, this is not the case for a statutory health attorney or a personal attorney under an enduring power of attorney. Potentially, this means that:

- statutory health attorneys and personal attorneys, who will usually be family members or close friends of an adult, could authorise restrictive practices which may include lengthy periods of seclusion and restraint of an adult
- this decision would not be reviewed or oversighted by any person or body.

This contrasts, for example, with the detailed provisions of the *Mental Health Act 2000* referred to above. The Public Advocate is concerned that there is the potential for major and unchecked infringements of human rights.

Of course, it is acknowledged that in accordance with the Tribunal's decision, for seclusion or restraint to constitute health care, these must be first recommended by a health provider, and then be implemented, often by an independent service provider. Despite the involvement of other parties in the process, there are no guidelines or rules about how the restrictive practices might reasonably be implemented or monitored.

The Public Advocate considers that the extent of the power of a substitue decision maker to consent to restrictive practices should be closely considered in the guardianship review.

8.3 High Court intervention

As reported in the Annual Reports 2003-04 and 2004-05, the Public Advocate intervened in proceedings in *Willett v Futcher*[90].

The High Court of Australia handed down its decision on 7 September 2005. The issue was what fund management expenses could be claimed as a head of damage in a personal injuries compensation case. The Public Advocate considered this a matter of systemic concern, since it impacts on adults who have impaired capacity as a result of a traumatic brain injury (e.g. motor vehicle accident).

The plaintiff had been injured as a child, as a result of the defendant's negligence, and as a consequence was unable to manage her own affairs. The court unanimously determined the following:

- The plaintiff was entitled to recover an amount assessed as allowing for remuneration and expenditure properly incurred or charged by an administrator during the anticipated life of the fund.
- Management fees that are incurred because of the client's lack of capacity to manage her own affairs, which was the result of the defendant's negligence, are not too remote to be compensated as incurring the expenses is the direct result of the defendant's negligence.
- It is incorrect to compare a person with impaired capacity with an investor with a similar amount of money to invest, but who does not lack capacity.

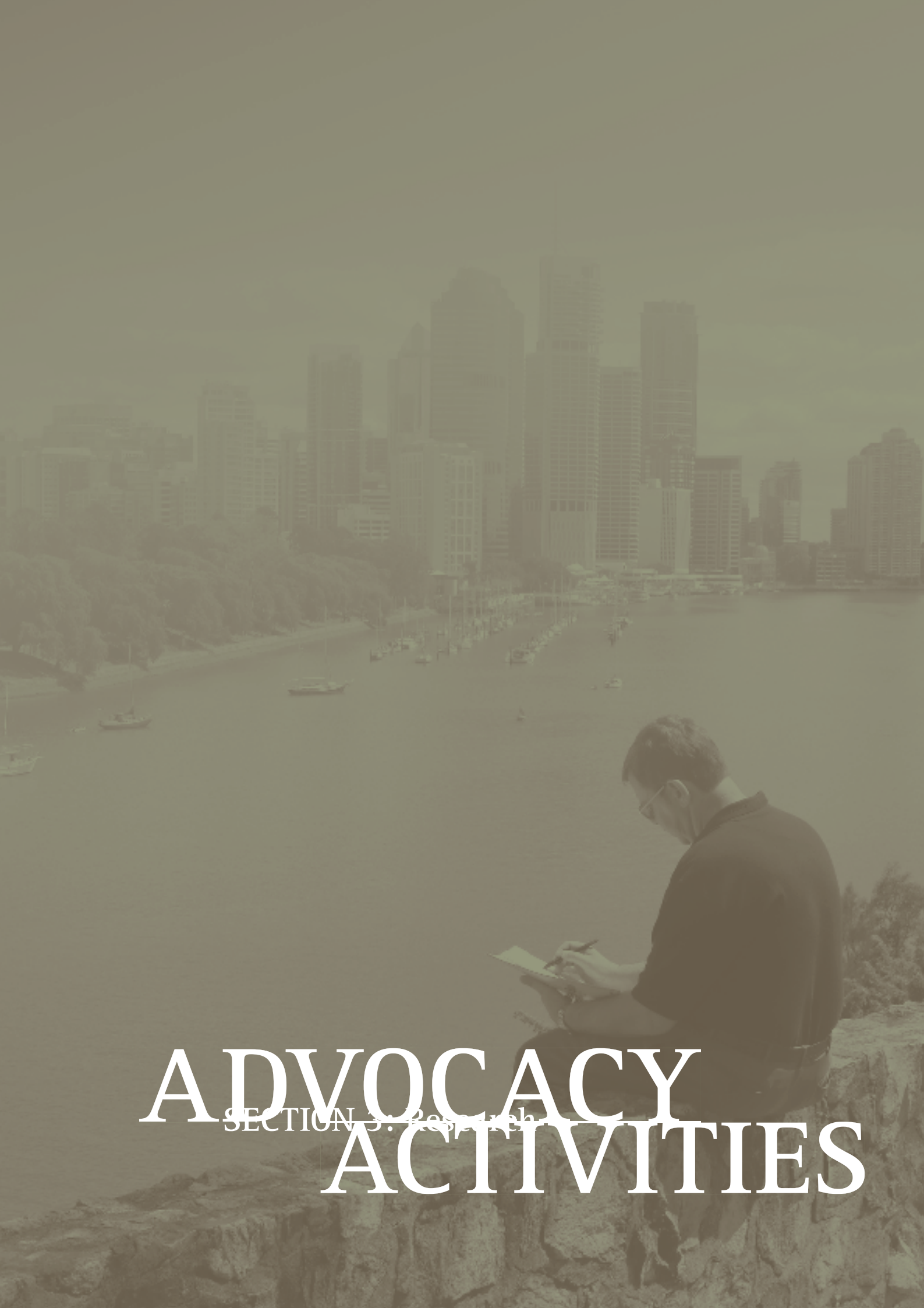
- The principle to be used in calculating the damages in such a case is an amount that will place the plaintiff, so far as is possible, in the same position as they would have been in, had the negligence not occurred.

The matter was sent back to the Supreme Court of Queensland for calculation of the amount. The decision has clarified the kinds of costs which may be recovered.

9. Inquiries

Section 210 of the *Guardianship and Administration Act 2000* gives the Public Advocate power to intervene in an official inquiry, with the leave of the inquiry. During 2005-06, the Public Advocate made one such intervention, in the Queensland Health Systems Review. (Refer to section 4.2 for details).

Administration Officer Mena Ward



ADVOCACY ACTIVITIES

SECTION 3: Research

10. Discussion Papers Underway

10.1 Healthcare needs of people with impaired capacity

The physical healthcare needs of adults with impaired decision-making capacity have historically been neglected.[91] Research shows that this neglect can have significant – even life-threatening – consequences for this group of vulnerable people.[92] It is noteworthy that Community Visitors have found healthcare issues to be among the most serious systemic issues impacting on vulnerable people.[93]

During 2005-06, the Office commenced some background research into the systemic issues underlying the poor physical health of people with impaired capacity. The Office intends to pursue this issue further in 2006-07, with a view to releasing a Discussion or Issues Paper for circulation and comment. The Office is also developing an informal research partnership with the Community Visitor Program on this issue. (Refer also to section 1.2).

10.2 Parents with intellectual disability and the child protection system

An Issues Paper considering the issues facing parents with intellectual disability when they interact with the child protection system is underway. It is anticipated that the paper will be publicly released in 2006-07.

During the year, the Department of Child Safety prepared an adjunct practice paper directed at departmental staff who work with parents with intellectual disability. A draft of the Public Advocate's issues paper was requested for inclusion in the Department's Child Safety Practice Manual. This Office was advised that Child Safety staff were asked to consider the key issues raised by the draft Issues Paper. Among them are:

- the need to consider both risk and protective factors in a particular family and not just assume that where a parent has intellectual disability that there are simply risk factors
- recognising that children have a right to know their parents
- when considering a definition of intellectual disability consider the functional definition about what the person can or cannot do rather than rely on IQ assessments
- recognising that intellectual disability may not bear any relationship to parenting ability
- the need to address communication problems with clear, specific communication without using big words or written material
- understanding that social issues (such as poverty and illiteracy) may cause communication difficulties rather than intellectual disability or being oppositional
- raising the issue of shared care and contact with the family should it be decided that the parent cannot cope with fulltime care.

The paper points to a need for further work to consider the experiences of parents with mental illness and their interaction with the child protection regime.

(The Office has reported on developments in relation to grants of aid for parents with intellectual disability in section 2.3).

10.3 Ageing issues for people with lifelong disability

The issue of how to properly plan and provide for the continuing support of ageing adults with lifelong disability is a new phenomenon. The extended lifespan of adults with a disability raises issues which are quite new for families, service providers, governments and the wider community. How society and our service systems respond to ageing people with lifelong disability is of concern to the Office of the Public Advocate. The experience of ageing with lifelong disability has the potential to increase the vulnerability of persons and to render them more

susceptible to neglect, abuse and exploitation. (Refer section 6.1).

The Public Advocate acknowledges these serious emerging issues and is in the process of developing a Discussion Paper on this topic which is intended to be released in 2006-07.

10.4 Preventing suicide deaths of people with a mental illness

In sections 4.4, 8.1.2 and 11.5, the issue of suicide deaths of people with a mental illness is discussed. As part of the Public Advocate's intervention in the coronial inquest into the suicide deaths of several people with a mental illness, an Issues Paper was presented to the Court.

It is intended to convert the paper produced to the Coroner's Court into an Issues Paper for wider release during 2006-07.

Senior Research Officer Deborah Barrett

11. Research Partnerships

Figure 1: Financial contributions of the Office of the Public Advocate to research partnerships.

Research Project	2001-02	2002-03	2002-03	2004-05	2005-06
An integrative model of active ageing	$10,000				$5,000
The management of the financial assets of older people		$4,545		$5,000	
Journeys of Exclusion			$4,545		
Housing and support needs of people with a mental illness				$5,000	
Post discharge care of high risk psychiatric patients					$5,000

11.1 An integrative model of active ageing

Nature of Research: Australian Research Council (ARC) Linkage Grant

Lead Researcher: Centre for Social Change Research, Queensland University of Technology

Research Partners:

- Endeavour
- Office of the Public Advocate-Queensland
- Office of the Public Advocate-Victoria
- Queensland Department of Housing
- Queensland Aged and Disability Advocacy Inc.

An innovative research project titled *Developing an integrative active ageing model for policy makers and service providers to support older people with lifelong intellectual disability* is currently being undertaken by researchers from Queensland University of Technology (QUT) and La Trobe University in Victoria. The multidisciplinary research team is led by Associate Professor Laurie Buys, Director of QUT's Centre for Social Change Research.[94]

'Active ageing' is increasingly gaining international currency and it underpins Australia's national focus on healthy ageing. However, its meaning for older people with intellectual disability is unclear, as little is known about the impact of ageing upon this group. This research project aims to address these knowledge gaps through a series of case studies comprising key stakeholder groups in rural and urban Victoria and Queensland. An integrative model of active ageing for policy makers and service providers will be developed to facilitate the planning and appropriate distribution of resources for this population.

The research project is expected to be completed in July 2007. All interviews have been conducted and interview data has been transcribed and coded. In September 2006 a preliminary two-day workshop was held at QUT by the investigators to begin the process of model development. A further workshop will be held in February 2007 to refine the model. Interesting findings about the views and aspirations of older people with lifelong intellectual disability are emerging from the data and these will be used to develop the model of active ageing and presented in peer reviewed journals and conferences in 2007.

11.2 Asset management and financial abuse of older people: phase two

Nature of Research: Australian Research Council (ARC) Linkage Grant

Lead Researcher: School of Social Work and Applied Human Services, University of Queensland

Research Partners:
- Guardianship & Administration Tribunal
- Office of the Adult Guardian
- Office of the Public Advocate
- Office for Department of Communities, Disability Services, Seniors and Youth
- Public Trustee

The ARC research project has explored asset management and financial abuse from a variety of perspectives. It was formally completed in September 2005. Subsequently, a follow-on one year community development and demonstration project at Redcliffe commenced in February 2006.[95]

The ARC funded initial phase of the research conducted by The University of Queensland Ageing and Assets Research Program found that providing assistance with asset management is a common task of caring undertaken by many adult Australians. The increasing importance of prudent management of older people's financial assets is recognised as older people and their families seek to provide for long periods of retirement and current and future health care and other costs in older age. Uninformed and risky asset management practices as well as the financial abuse of older people were identified as areas of growing policy, practice and community concern.

The program of research indicated the need for whole of community strategies and partnerships to foster effective and protective assisted asset management practices for older people and their carers. The Redcliffe Asset Management Community Demonstration Project is an inter-sectoral initiative employing action research methods placing a strong emphasis on community ownership of the process and outcomes of the project. The project aims to address asset management issues experienced by older people, and family members and friends who assist them with asset management, and a range of public, community and private organisations involved in asset management. Organisations and groups involved in the project include the Redcliffe City Council, Centrelink, community organisations, community and residential care workers, banks, the Public Trustee, and a local solicitor.

The one year program has four components:

- Raising community awareness and education about asset management practices and accountability through workshops and community presentations.
- Inter-organizational protocols and referral networks. This has involved development and trial of a referral pathway about asset management and financial abuse.
- Staff training in recognition and responding to key issues about asset management and abuse.
- Development and evaluation of materials.

11.3 Journeys of Exclusion

Lead Researchers:
- Community Living Program
  At Risk Research and Outreach Service (ARROS)

Research Partners:
- Office of the Public Advocate
- Community Resource Unit

The Office is a participant in research which examines the transition to adulthood for young people with intellectual disability who have been in the care of child safety services. This is a critical issue, given the reported trend that they appear to be increasingly identified as homeless, and increasingly involved in the criminal justice system.

This research,[96] now is in its final stages, has identified the need for supports and services for this group of vulnerable people. Specifically, they require a similar level of support (although of a different nature) to that which they received as children. One research finding is that this support could include continuing the relationship with foster parents beyond the age of 18. The report is expected to be published and launched before the end of the year.

11.4 Housing and support needs of people with a mental illness

Project Auspice:

- Department of Housing

Research Partners:

- Office of the Public Advocate
- Queensland Health
- Disability Services Queensland

The provision of appropriate housing for people with a mental illness can enhance the effectiveness of their treatment and recovery.[97] The literature shows that appropriate, long term housing is integral to a person's recovery from a mental illness or psychiatric disability and that there is a direct link between 'good housing' and 'good mental well-being.' It also shows that service responses will be most effective when they facilitate a person's choice about where (and with whom) they live and when they provide access to necessary social supports and services.[98]

While research has pointed to the positive impact of housing and supports in the lives of people with a mental illness or psychiatric disability, there is a gap in knowledge about the features of housing and associated supports that facilitate or contribute to recovery. This knowledge would assist the Department of Public Works and Housing to work collaboratively with Queensland Health and Disability Services Queensland to improve outcomes for people with a mental illness or psychiatric disability.

In 2004-05, the Office of the Public Advocate worked with the Department of Public Works and Housing to develop a joint research project on this issue, to also include Disability Services Queensland and Queensland Health. The purpose of the research will be to identify the characteristics of housing provision and associated supports that facilitate or contribute to the recovery of people with a mental illness or psychiatric disability. The research will inform the consideration of innovative and flexible housing options which contribute to the recovery of Queenslanders with a mental illness or psychiatric disability, and the identification of tangible steps that can be taken by the Queensland Government to better meet the housing needs of this group. This project experienced some unavoidable delays during 2005-06. At the time of writing, the tender specifications for a research consultant are being finalised.

11.5 Post-discharge care for high risk psychiatric patients

Project Auspice:

- Australian Institute for Suicide Research and Prevention (AISRAP)

Research Partners:

- Queensland Health
- Lifeline
- Office of the Public Advocate

The Office of the Public Advocate is currently supporting a project conducted by the Australian Institute for Suicide Research and Prevention on post-discharge support and suicide ideation.[99] Its objective is to implement and evaluate an intensive case management service for people being discharged from inpatient psychiatric care who have been at risk of suicide, given their heightened vulnerability following discharge.

The Public Advocate is a minor research partner in this project. Using control and treatment groups, the project is examining the impact of a program of

intensive case management and informal telephone support follow-up for high-risk psychiatric patients following discharge. Stage One of the project is complete, and is already showing impressive (preliminary) results:

- a decrease in self-harming behaviours
- significant decrease in measured suicide ideation, depression and hopelessness
- significant increase in measured quality of life
- increased satisfaction with psychiatric care.

Stage Two will seek to build on these preliminary results using a larger sample size to allow for greater reliability and validity of conclusions. Importantly, this research project could prepare the way for a set of more innovative and robust service responses by government and non-government service providers, following a vulnerable person's discharge from hospital.

ORGANISATIONAL ACTIVITIES

SECTION 4: The Public Advocate's Office

12.1 Organisational structure

The Public Advocate is currently supported by three full time Senior Research Officers plus one full time Administration Officer and all positions are permanently filled. A trainee in Business Administration was appointed in June 2005 for 12 months. Mena Ward provides administrative support on a permanant part time basis. A part-time casual Senior Research Officer was engaged for a period in June 2006.

Public Advocate Michelle Howard delivered a paper at 5th International Conference for Public Trustees and Public Guardians.

12.2 Operational goal

The Office's Strategic Plan 2006-08 includes the following goal: 'To conduct systems advocacy effectively and efficiently'.

In support of this objective the Office has:

- developed an individual work plan for each staff member
- developed an individual development plan for each staff member
- conducted regular team meetings for work planning and peer review purposes
- maintained its files on the RecFind records system
- developed partnerships in relation to research and other project-based work
- devised and implemented an effective library system.

12.3 Speeches, presentations and facilitations

The Public Advocate and Staff delivered a range of speeches, presentations and facilitated discussions about a variety of issues. Some of these are reported throughout this report. Others included:

- Quality supports for people with complex needs and 'challenging behaviours'
- Families and substitute decision-making
- Systemic issues in mental health
- The impact of legislation on the lives of people with a disability
- Facilitating the creation of a network of Government agencies for the protection of vulnerable adults and the regular facilitation of the network.

Staff of the Office – Standing L to R: Michelle Howard, Lindsay Irons, Cashel Hearn, Deborah Barrett. Sitting L to R Debbie Barber, Mena Ward, Beverly Funnell. Absent: Cheryl Mohan-Druce & Kate Kunzleman.

12.4 Staff training and development

The Office has a strong commitment to the training and professional development of staff. During the course of the year staff undertook the following training in:

- Emotional intelligence
- Protecting the health and lives of hospital patients
- Advanced Public Sector Writing
- Excel Intermediate
- Excel Advanced
- Indigenous Cultural Awareness Training
- Developing Resistance
- Future of the Public Service
- Positive Psychology

12.5 Consultants

Mellish & Associates were contracted to assist the Office in devising the 2006-08 strategic plan.

12.6 Overseas travel

Michelle Howard delivered a speech at the 5th International Conference of Public Trustees and Public Guardians in London – *Empowerment and Protection in the 21st Century*.

12.7 Financial summary

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

The full financial details relating to the operations of the Office are reported in the Annual Report of the Department of Justice and Attorney-General for 2005-06.

A summary is provided below of expenditure for the 2005-06 financial year.

Expenditure Items	$ 000
Employee Related Expenses	427
Supplies and Services	137
Grants	11
Depreciation, Amortisation & Deferred Maintenance	2
TOTAL	**577**

APPENDICES

SECTION 5. Appendices

Appendix 1

The General Principles and the Health Care Principle

The work of the Office of the Public Advocate is underpinned by the General Principles and the Health Care Principle. A person or entity who performs a function under the *Guardianship and Administration Act 2000* must apply the General Principles and, for a health matter or a special health matter, the Health Care Principle.[100]

General Principles – *Guardianship and Administration Act 2000* Schedule 1 Part 1

1. Presumption of capacity

An adult is presumed to have capacity for a matter.

2. Same human rights

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

2 The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

3. Individual value

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

4. Valued role as member of society

1 An adult's right to be a valued member of society must be recognised and taken into account.

2 Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

5. Participation in community life

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

6. Encouragement of self-reliance

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

7. Maximum participation, minimal limitations and substituted judgment

1 An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.

2 Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.

3 So, for example:–

a the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and

b to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and

c a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.

4 Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.

5 However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.

6 Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

8. Maintenance of existing supportive relationships

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

9. Maintenance of environment and values

1 The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.

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

10. Appropriate to circumstances

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

11. Confidentiality

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

Health Care Principle – *Guardianship and Administration Act 2000* Schedule 1 Part 2

1 The **health care principle** means power for a health matter for an adult should be exercised by a guardian, the adult guardian, the tribunal or, for prescribed special health care, another entity –

a) in the way least restrictive of the adult's rights; and

b) only if the exercise of the power is appropriate to promote and maintain the adult's health and wellbeing.

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

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

2 In deciding whether the exercise of a power is appropriate, the guardian, the adult guardian, tribunal or other entity must, to the greatest extent practicable –

a) seek the adult's views and wishes and take them into account; and

b) take the information given by the adult's health provider into account.

3 The adult's views and wishes may be expressed –

a) orally; or

b) in writing, for example, in an advance health directive; or

c) in another way, including, for example, by conduct.

4 The health care principle does not affect any right an adult has to refuse health care.

5 In deciding whether to consent to special health care for an adult, the tribunal or other entity must, to the greatest extent practicable, seek the views of the following person and take them into account –

a) a guardian appointed by the tribunal for the adult;

b) if there is no guardian mentioned in paragraph (a), an attorney for a health matter appointed by the adult;

c) if there is no guardian or attorney mentioned in paragraph (a) or (b), the statutory health attorney for the adult.

Appendix 2

Strategic Plan 2006-08, Office of the Public Advocate

Adults with impaired decision-making capacity live with heightened vulnerability.

Our Role

The *Guardianship and Administration Act 2000* gives the Public Advocate the function of systemic advocacy for:

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

The role of the Public Advocate is to influence change rather than make it.

Our Vision

Our vision is for a society with systems that serve people well by valuing them, upholding their rights, providing for their needs, supporting their participation in everyday life and protecting them from abuse and neglect.

Our Guiding Principles

Our advocacy will affirm and reflect the General Principles and Health Care Principle set out in the *Guardianship and Administration Act 2000*.

Our Challenges

The challenge is to:

- Identify key systemic issues
- Prioritise issues so as to use our limited resources effectively and efficiently
- Develop and maintain constructive relationships with government and non-government stakeholders
- Be recognised for our relevance and effectiveness
- Ensure our systems advocacy is grounded in the lived experience of people with impaired decision-making capacity.

Our Goals

Our Goals	Our Strategies	Our Performance Indicators
GOAL 1: To independently conduct systems advocacy	1.1 Provide systemic advocacy across government and non-government organisations 1.2 Use a range of systems advocacy tools 1.3 Produce an Annual Report	Stakeholder feedback Published submissions and Discussion Papers Participated in conferences Engaged in dialogue, stakeholder forums and informal networks Undertaken interventions Held reference group meetings
GOAL 1a: To provide proactive, targeted systems advocacy aimed at improving the lives of adults with impaired capacity for decision-making GOAL 1b: To provide responsive advocacy with respect to systemic issues as they arise, aimed at improving the lives of adults with impaired capacity for decision-making	1.4 Review the framework and criteria for prioritising activities 1.5 Use key sources of data, agency links, relationships and referrals 1.6 Initiate, identify and promote strategic networks 1.7 Undertake, sponsor and collaborate in relevant research 1.8 Influence development and/or reform of appropriate legislative and service systems 1.9 Influence policy formulation and implementation of government and non- government agencies 1.10 Encourage service providers to develop appropriate programs and services which protect the adults' rights, interests and well-being 1.11 Monitor and review services and facilities	
GOAL 2: To conduct systems advocacy effectively and efficiently	2.1 Review the Office's communication strategy 2.2 Routinely invite critical feedback 2.3 Manage limited resources to maximise influence and impact	Stakeholder feedback

Appendix 3

Membership of the Public Advocate's Reference Group 2005-06

The Office of the Public Advocate holds regular reference group meetings to develop and maintain constructive relationships with stakeholders, obtain critical feedback on its performance and input as to how it might direct its limited resources. Meetings where held in October 2005 and March 2006.

The reference group comprised individuals who have experience of the broad disability field and included senior representatives from government agencies and statutory bodies, community organisations, academia, advocacy organisations and service providers.

The October 2005 group took a particular interest in the provision of appropriate service responses for people with impaired capacity who have complex support needs or who have been characterised as exhibiting 'challenging behaviour'.

The March 2006 group was focused on assisting the Office of the Public Advocate in developing the 2006-08 strategic direction of the Office.

The Office thanks the following people for their participation:

Ms Pat Cartwright
Ms Glenda Grimely
Ms Anne Livingstone
Ms Barbara Shaw
Mr Anthony Prithchard
Ms Anne Greer
Mr Morrie O'Connor
Ms Julie Bray
Ms Madonna Tucker
Mr Evan Klatt
Ms Lynda Shevellar
Mr Peter Mewett
Ms Melda Boundy
Mr Peter Young
Ms Kay McInnes
Ms Claire Runciman
Ms Di Taylor
Mr Bob Green
Mr Laurie Buys
Ms Elissa Morriss
Mr Kevin Cocks
Ms Paula Scully
Ms Jacquie Argent
Mr Alan Albury
Ms Felicity Maddison
Ms Gail Parsons
Ms Karen Robinson
Ms Natalie Parker
Ms Paige Armstrong
Ms Sue Bell
Ms Louise Starina
Mr Ron Cooper
Ms Louise Young
Mr Jeff Cheverton
Mr Kingsley Bedwell
Ms Jennifer Lane
Mr Brad Swan
Mr Roy Pederson
Mr Marcus Richards
Ms Marie Skinner
Ms Melinda Ewan
Ms Margaret Deane
Ms Pam Bridges
Ms Jane Sherwin
Mr John Dickenson
Ms Cathie Cooke
Ms Marj Bloor
Ms Valmae Rose

Appendix 4

Committees and Working Groups include:

Department of Communities

- Residential Services Stakeholder Advisory Committee
  - Resident's voice working group (temporary subcommittee)
  - Case management for vulnerable residents (temporary subcommittee)

Disability Services Queensland

- Reference Group on Disability
- Queensland Government Strategic Framework for Disability Framework Implementation Committee (FIC)
  - FIC working party on implementation of the Strategic Plan for Psychiatric Disability and Support 2000-05
  - FIC working Party on future reporting arrangements under the Queensland Government Strategic Framework for Disability
- Focus group to examine and provide feedback on draft disability legislation

Department of Justice and Attorney-General

- Court diversionary options for people with impaired capacity
- Justice Statutory Authority Group
- Queensland Law Reform Commission's Guardianship Review Reference Group

Community Visitor Program

- Community Visitor Program Evaluation Group
- Reference Group for the Community Visitor Program

National

- Australian Guardianship and Administration Committee

Queensland Health

- Aged Care Consumer Reference Group

Networks

- Vulnerable Adults Stakeholder Group
- Boarding House Action Group
- Younger People in Aged Care Alliance
- Community Care Coalition
- Universal Housing Design Working Group
- Queensland Aged Care Network
- Focus Group (Conference on disabilities, mental health & the criminal justice system)

Brisbane Housing Company

- Service for the critically homeless

Footnotes

[1] Queensland Law Reform Commission, WP No 60, July 2006.

[2] Queensland Law Reform Commission, *Public Justice, Private Lives: A Companion Paper* WP No 61 July 2006.

[3] Queensland Law Reform Commission , *Confidentiality: Key Questions for People Who May Need Help with Decision-making*, MP No 38 July 2006; *Confidentiality*: *Key Questions for Families*, *Friends and Advocates*, MP No 39, July 2006.

[4] Queensland Law Reform Commission, *Public Justice, Private Lives: A CD-ROM Companion*, WP No 62, August 2006.

[5] *Guardianship and Administration Act 2000*, s 222 provides for visitable sites to be prescribed under regulation. Visitable sites are prescribed under the *Guardianship and Administration Regulation 2000*, section 8 and schedule 2.

[6] *Guardianship and Administration Act 2000,* s 222.

[7] Under the *Residential Services (Accreditation) Act 2002*, Level 3 services are those which provide accommodation, food and some type of personal support service.

[8] *Guardianship and Administration Act 2000*,s 224(2) (a).

[9] The functions of community visitors are prescribed in *Guardianship and Administration Act 2000*, s 224.

[10] Re *MLI* [2006] QGAAT 31 (19 May 2006).

[11] Queensland Law Reform Commission, *Assisted and Substituted Decisions: Decision-making By and For People with a Decision-making Disability*, Report No 49 (1996).

[12] Ibid 320-321. Consistently, it did not envisage end-of-life decision-making in an advance health directive made by an adult in advance of impairment of capacity: 347. However, *Powers of Attorney Act 1998* s 35-36 also allow for end-of-life decision-making in advance health directives.

[13] QLRC, above n 11, 321.

[14] *Guardianship and Administration Act 2000* as passed No 8, 2000: ss 65,68, schedule 2 ss6-7, 16.

[15] See generally, *Guardianship and Administration and Other Acts Amendment Act 2001*; and *Guardianship and Administration Act 2000* ss 66, 66A, schedule 2 part 2 ss 2, 4-5B and *Power s of Attorney 1998* ss 62-63, schedule 2 part 2 ss 2, 4-5B.

[16] See *Guardianship and Administration and Other Acts Amendment Act 2001* s 7; and *Guardianship and Administration Act 2000* s 63.

[17] The subject of the paper was chosen and researched following consideration of an Issues Paper released in February 2005, by Dr Ben White and (then) Associate Professor Lindy Willmott, *Rethinking Life-Sustaining measures: Questions For Queensland* QUT 2005. Dr White and Associate Professor Willmott sought submissions to their Issues Paper by 30 May 2005. A formal submission was made by the current Public Advocate in her personal capacity.

[18] The presentation notes have been placed on the OPA website.

[19] See for example, the seminal case of *Airedale NHS Trust v Bland* [1993] AC 789.

[20] Under Queensland guardianship law, consent is required to be given for most health care and that most commonly a substitute decision-maker will make health care decisions. It was noted that withholding or withdrawal of treatment from a person who cannot make the decision themself can generally only occur where the person has given an advance directive to authorise it, or with the consent of a substitute decision-maker under the guardianship regime. (There are also provisions for urgent situations). In the latter case, health professionals must also consider the action to be consistent with good medical practice.

[21] [2005] QSC 127 (13 May 2005). (Note that the matter was referred from the Guardianship and Administration Tribunal: *Re L* [2005] QGAAT 13 (15 March 2005). Cf An earlier case of *Re Bridges* [2000] QSC 188 [2001]1 Qd.R. 574 where dialysis was not considered involuntary treatment by Ambrose J. However, the issue of whether it could be involuntary treatment was not argued/considered.

[22] Qld Alliance Newsletters, December 2005, 12 and April 2006, 8: www.qldalliance.org.au.

[23] The paper considered the decision, the concerns articulated, and relevant case law. The presentation notes are available on the Public Advocate's website at http://www.justice.qld.gov.au/guardian/pa.htm.

[24] *Guardianship and Administration Act 2000 s 79*.

[25] Historically, this jurisdiction developed from the royal prerogative and was exercised by the Lord Chancellor, and later the Court of Chancery. When the Supreme Court of Queensland was established, it was given this jurisdiction. It is exercised based on the need to protect those unable to make decisions for themselves, in the 'best interests' of a person: For example, see discussion in QLRC, above n 11, 21-22; *Re Magavalis* [1983] 1 Qd R 59; and *NJC* v *NSC* [2005] QSC 068.

[26] *Guardianship and Administration Act 2000 s 79*.

[27] *Guardianship and Administration Act 2000* Schedule 1 12(4); *Powers of Attorney Act 1998* Schedule 1 s 12(4).

[28] Note that, if it had been decided in *Re Langham* that the decision could be made under the guardianship regime, there was an issue about whether the consent of a guardian could operate as a matter of law because of *Guardianship and Administration Act* s 67. See also, *Re L* [2005] QGAAT 13 (15 March 2005) [47-58]. The Supreme Court did not answer this question, due to its decision that the mental health regime applied. It is suggested that *Guardianship and Administration Act 2000 s* 67 requires consideration in the guardianship review.

[29] The Research Project is entitled, *Improving service provision by legal practitioners to clients in relation to enduring powers of attorney and advance health directives* and is being conducted by Dr Ben White and Professor Lindy Willmott.

[30] [2006] QGAAT 54.

[31] *Coroners Act 2003* s 46 provides that the Coroner may make comments.

[32] Civil law generally refers to areas of law other than the criminal law.

[33] Supreme Court of Queensland (2005) *Equal Treatment Benchbook* 13.

[34] Emerson E, et al (1988) *'Challenging behaviour' and community services: Who are the people who challenge the services?* Mental Handicap (16) 16-19.

[35] Office of the Public Advocate, *Opening Doors to Citizenship* (2004), 15.

[36] Annual Report 2004-05, The Office of the Public Advocate – Queensland, section 5.4.

[37] Office of the Public Advocate, above n 35.

[38] Ibid, 16.

[39] Ministerial Portfolio Statement 2006-2007 State Budget Disability Services Queensland.

[40] Disability Services Queensland Annual Report 2000-2001.

[41] Public Advocate Annual Report 2001-02, 38.

[42] DSQ Discussion Paper (2001) – ALS Improvement Project.

[43] R. Stancliffe et al (2004) *Active Support in Australia: Implementation and evaluation.* ASSID 2004, Conference Paper.

[44] DSQ reports a continuum of group home service models; including Innovative Supports and Housing, purpose-designed features in some houses, revised support for individuals who present with more 'challenging behaviour' and the adoption of an underpinning active support practice framework.

[45] Figures provided by the National Younger People in Nursing Homes Project which defines younger people as under 65 years.

[46] For example, Udechuku, A et al (2005) *Assertive community treatment of the mentally ill: service model and effectiveness*, Australasian Psychiatry, 13(2), 12-134.

[47] For example, South Australian Department of Health (2005) Paving the way: review of mental health legislation in South Australia.

[48] Research indicates that people receiving treatment for a mental illness are generally no more violent or dangerous than the wider population. Refer to *Violence and Mental Illness*, SANE Fact Sheet (2005). Where there is correlation between violence and schizophrenia, having appropriate systems of care in place can significantly reduce criminal behaviour, and improve the quality of life of people with a mental illness. Refer to Mullen, P (2006) *Schizophrenia and violence: from correlations to preventive strategies*, Advances in Psychiatric Treatment, 12: 239-248.

[49] Department of Health and Ageing (2005) *National Mental Health Report 2005: Summary of Ten Years of Reform in Australia's Mental Health Services under the National Mental Health Strategy 1993-2003* Commonwealth of Australia, Canberra, 23, figure 8.

[50] 12.

[51] G. Groom, I. Hickie, and T. Davenport. *'Out of Hospital, Out of Mind!' A report detailing mental health services in Australia in 2002 and community priorities for national mental health policy for 2003-2008*, Canberra, Mental Health Council of Australia, 2003. ii.

[52] *National Standards for Mental Health Services*, (1996), standards 1.6 & 7.

[53] *2003-04 Annual Report of the Queensland Public Advocate* (2004) ss 2.1 and 10.1.

[54] http://www.justice.qld.gov.au/guardian/pa.htm.

[55] M Cannon et al (2001) *Restraint practices in Australasian emergency departments*, Australian and New Zealand Journal of Psychiatry, 35, 464-67.

[56] National safety priorities in mental health: a national plan for reducing harm, National Mental Health Strategy, Oct. 2004, 33.

[57] Ibid.

[58] For example, refer to *Mental Health Act 2000,* ss 141-7, 159, 516-17.

[59] For example, see *Mechanical Restraint: Chief Psychiatrist's Guideline*, Victorian Dept of Human Services (2006). See also *Policy Directive: Seclusion Practices, Use of Restraint and Use of IV Sedation in Psychiatric Facilities*, NSW Dept Health (2005).

[60] For example see Taxis, J. *Ethics and Praxis: alternative strategies to physical restraint and seclusion in a psychiatric setting* (2002), Issues in Mental Health Nursing, 23, 157-70. See also Sullivan, A. et al *Reducing Restraints: alternatives to restraints on an inpatient psychiatric service – utilizing safe and effective methods to evaluate and treat the violent patient* (2005) Psychiatric Quarterly, 75(1), 51-65. See also McCue, R. et al *Reducing restraint use in a public psychiatric inpatient service* (2004), Journal of Behavioural Health Services & Research, 31(2), 217-224.

[61] For example, see Wynn, R *Psychiatric inpatients' experiences with restraint* (2004), The Journal of Forensic Psychiatry & Psychology, 15(1), 124-44.

[62] National Safety Priorities in Mental Health; a National Plan for Reducing Harm, (2005), 17.

[63] Ibid, 17.

[64] Ibid. 17.

[65] 4-6.

[66] For example, Robert King et al *Enhancing employment services for people with severe mental illness: the challenge of the Australian service environment*, Australian and New Zealand Journal of Psychiatry 2006; 40:471-7.

[67] http://www.justice.qld.gov.au/guardian/pa.htm.

[68] There is some interstate data on mental illness and intellectual disability.

[69A] Zammit, A. (2004). An analysis of Problem Solving Courts and existing Dispositional Options: The search for improved methods of processing defendents with a mental impairment through the Criminal Courts. Office of the Public Advocate – Victoria.

[69] Ministerial Portfolio Statement 2005 – 2006 State Budget (Department of Corrective Services).

[70] The Mackay District Office is working with DSQ and Mental Health; the Brisbane North and Pine Rivers District Office is working cooperatively with the Prince Charles Mental Health Unit. Training and information sharing, close working relationships, and joint case management responsibilities have been established.

[71] *Disability Services Act 2006*, section 11 What is a *disability*

1) A *disability* is a person's condition that—
   a) is attributable to—
      i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
      ii) a combination of impairments mentioned in subparagraph (i); and
   b) results in—
      i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management; and
      ii) the person needing support.
2) For subsection (1), the impairment may result from an acquired brain injury.
3) The disability must be permanent or likely to be permanent.
4) The disability may be, but need not be, of a chronic episodic nature.

[72] The Office understands that frequently people with impaired decision-making capacity are unable to participate in established programs. Frequently, people with impaired capacity are unable to demonstrate their suitability to participate in such programs, because of their illiteracy, substance abuse issues, and different learning styles and may be deemed by the service provider not to possess sufficient cognitive capacity to undertake their specific program.

[73] See for example the list of responsibilities for Drug Court Officers outlined in Irwin, J. *Operational Models update: Drug Diversion* a paper delivered to the Court Drug Diversion Initiatives Conference: 25-26 May 2006. www.justice.qld.gov.au/conferences/papers.htm. For an excellent discussion see G. Wiman. *Program integration (or the Yin and Yang of program management)*. The author details what can happen at the various stages without proper management.

[74] The Office is pleased that funding has continued in the 2006-07 financial year.

[75] Office of the Public Advocate, *Annual Report* 2003-04.

[76] 'The meaning of home', Office of the Public Advocate, Annual Report 2003-04, 13.

[77] Browne, G. & Courtney, M. (2004). *Measuring the impact of housing on people with schizophrenia*. Nursing and Health Sciences, 6, 37-44.

[78] Baldry, E. McDonnell, D. Maplestone, P. & Peeters, M.(2003). *Ex-prisoners and accommodation: What bearing do different forms of housing have on social reintegration?* Australian Housing and Urban Research Institute.

[79] Berry, M. *Counting the Cost of Homelessness*. Australian Housing and urban Research Institute Research & Policy Bulletin Issue 24 July 2003.

[80] 10.

[81] *Guardianship and Administration Act 2000* s210, the Public Advocate must seek leave to intervene; under *Coroners Act 2003* s 36, the Coroner can allow a person who the Coroners Court considers has sufficient interest in the inquest to appear, examine witnesses and make submissions.

[82] 12.

[83] [2006] QGAAT 31; available at www.austlii.edu.au .

[84] *Criminal Code 1899* ss 355 & 358 in relation to deprivation of liberty; ss 335 & 339 in relation to assault.

[85] section 112 (3).

[86] The Office will refer this issue to the Queensland Law Reform Commission's Guardianship Review.

[87] [2005] *QGAAT* 26.

[88] s 75 Use of force: A health provider and a person acting under the health provider's direction or supervision may use the minimum force necessary and reasonable to carry out health care authorised under this Act.

[89] By virtue of the operation of the *Powers of Attorney Act 1998* s62 a statutory health attorney may make any decision about a health matter which an adult could lawfully make if the adult had capacity. Section 63 provides that the statutory health attorney is the first, in listed order, who is readily available and culturally appropriate of:
   a) a spouse if the relationship is close and continuing;
   b) a person aged 18 or over who has the care of the adult but is not a paid carer;
   c) a person aged 18 or over who is a close friend or relation of the adult and not a paid carer for the adult.

If there is no-one readily available and culturally appropriate, the Adult Guardian is the statutory health attorney.

[90] [2005] HCA 47.

[91] For example, see Rebecca Coghlan, David Lawrence, D'Arcy Holman and Assen Jablensky, *Duty to Care, Physical Illness in People with a Mental Illness (2001)* Department of Public Health and Department of Psychiatry and Behavioural Science, The University of Western Australia 47; NG Lennox and MP Kerr 'Primary Health Care and People with an Intellectual Disability: the evidence base' (1997) 41 *Journal of Intellectual Disability Research* 368.

[92] Australian Institute of Health and Welfare (2006) *Mortality over the Twentieth Century in Australia: Trends and Patterns in Major Causes of Death* 2006.

[93] Department of Justice and Attorney-General, 2004-05 *Annual Report*, Appendix 10, 63.

[94] The research team consists of Associate Professor Laurie Buys, Professor Gillian Boulton-Lewis, Dr Marie Know, Professor Helen Edwards, Associate Professor Chris Bigby & Jan Tedman-Jones.

[95] The research team has consisted of Professor Linda Rosenman, Associate Professor Jill Wilson, Dr Cheryl Tilse, Dr Deborah Setterlund, Dr David Morrison, Anne-Louise McCawley, Jennie Peut and Leona Berrie.

[96] The researcher team consists of Robyn Jackson, Morrie O'Connor and Belinda Drew.

[97] Lorna J Moxham and Shane A Pegg, *Permanent and stable housing for individuals living with a mental illness in the community: A paradigm shift in attitude for mental health nurses*, Australian and New Zealand Journal of Mental Health Nursing (2000), 9, 882-88.

[98] Office of the Public Advocate, 'Roundtable Key Themes – Housing, psychiatric disability and recovery', 3 December 2004, 1.

[99] The research team consists of Professor Diego De Leo, Dr Marianne Wyder and Travis Heller.

[100] Section 11.

For further information

The Office of the Public Advocate in Queensland has different functions to that of the Public Advocate in other Australian States. The role of the Public Advocate in Queensland is systems advocacy for adults with impaired capacity.

If you would like to find out more about the Office of the Public Advocate in Queensland you can do so by:

Website: http://www.justice.qld.gov.au/guardian/pa.htm

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