

# Annual Report

2019-20

## Acknowledgement of Country

The Public Advocate and staff acknowledge the traditional custodians of the lands across the State of Queensland and pay our respects to the Elders past, present, and emerging. We value the culture, traditions and contributions that Aboriginal and Torres Strait Islander people have made to our communities, and recognise our collective responsibility as government, communities and individuals to ensure equality, recognition and advancement of Aboriginal and Torres Strait Islander Queenslanders in every aspect of our society.

### Public availability

This report is available online at <http://www.justice.qld.gov.au/public-advocate/about-us/performance>. Alternatively, you may contact our office to access a hard copy.

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### Office location

State Law Building, 50 Ann Street, Brisbane, QLD 4000

### Contact details

Mail: GPO Box 149, Brisbane, QLD 4000

Telephone: + (61 7) 3738 9513

Facsimile: + (61 7) 3738 9516

Website: [www.publicadvocate.qld.gov.au](http://www.publicadvocate.qld.gov.au)

Email: [public.advocate@justice.qld.gov.au](mailto:public.advocate@justice.qld.gov.au)

### Feedback on this report

Feedback on this report is welcomed. A feedback survey is available at <https://www.getinvolved.qld.gov.au/gi/consultation/7550/view.html>. Alternatively, a hard copy of the survey may be requested from our office.

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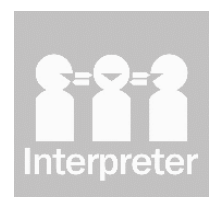
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### Interpreter service

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



The Honourable Yvette D'Ath MP  
Attorney-General and Minister for Justice  
Leader of the House  
1 William Street  
BRISBANE QLD 4000

10 October 2020

Dear Attorney-General,

I am pleased to present the Public Advocate's Annual Report for the financial year ended 30 June 2020.

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

The Annual Report provides information on the key activities of the Public Advocate and staff of the office for 2019-20 and a statement of the office's financial and operational functions for the year.

I certify that this Annual Report complies with the requirements set out in the *Annual report requirements for Queensland Government agencies* as outlined in the compliance checklist. The Public Advocate is not considered to be a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Yours sincerely,



Mary Burgess  
**Public Advocate**



# Message from the Public Advocate

My work this year, and that of my office, was dominated by two major issues — responding to the COVID-19 pandemic, including ensuring that government responses considered the rights and interests of people with impaired decision-making capacity, and the preparation of a systemic report about the Public Trustee's fees and charges for their administration clients.

The year commenced with the office taking a wide focus on issues impacting people with impaired decision-making capacity, including:

- elder abuse issues;
- the use of restrictive practices in residential aged care;
- preparing for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability;
- progressing a systemic project on the Public Trustee's fees and charges;
- supporting Halwyn Centre residents and their families in their engagement with Queensland Health about the ongoing operations of the centre; and
- the commencement of the National Disability Insurance Scheme and its Quality and Safeguards Commission.

After a couple of years of persistent advocacy, it felt as though progress was made in gaining recognition and understanding of the human rights and legal issues involved in some of our key focus areas. One example of this was in the use of restrictive practices in residential aged care, where, after numerous distressing media reports highlighting the use of chemical restraint in residential aged care, the Australian Government introduced the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*. The purpose of the Quality of Care Amendment was to limit the use of chemical and physical restraint by providers of residential aged care and respite services. However, while the amendment purported to achieve this objective, it fell short of providing adequate safeguards for aged care residents from unauthorised use or misuse of restrictive practices, including physical and chemical restraint. It also created confusion around who could authorise these practices. The amendment did not recognise the roles of substitute decision-makers for aged care residents, nor the obligations of medical practitioners to obtain informed consent prior to the administration of medical treatment.

In August 2019, guardians and advocates from across Australia wrote to the Joint Parliamentary Committee on Human Rights raising their concerns about the Quality of Care Amendment. The Committee conducted an inquiry and hearing into the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019* and considered whether the instrument should be recommended for disallowance. Ultimately, the committee recommended amendments to the principles, which were accepted by the government.

While the amendments do not go far enough in protecting the rights and interests of aged care residents, they are an improvement on what was initially proposed. The amendments also required that the principles be reviewed.

Following this, I was invited to participate on the Aged Care Restraint Advisory Group for the Review of the Restraint Principles established by the Commonwealth Department of Health. The review is required under the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*, and must consider whether there has been a reduction in the inappropriate use of chemical and physical restraint in residential aged care and whether levels of awareness, attitudes, skills and behaviours in relation to the use of restraint have changed across the aged care sector. The Department of Health is required to report on these issues by 31 December 2020.

The advisory group process has been very positive and I am hopeful of a report that recommends further improvements to the framework for regulating restrictive practices in residential aged care and education of aged care providers and medical practitioners about their legal obligations in this regard. Every opportunity to advocate to improve understanding and awareness of the rights of people with impaired decision-making capacity is an opportunity to contribute to positive change in our community.



Unfortunately, but unsurprisingly, we have since heard similarly harrowing stories about the use of chemical restraint for people with disability in the hearings before the Disability Royal Commission. While these stories of people's experiences in the aged care and disability systems are often quite distressing to hear, we need to expose these inhumane practices and, as a community, make it clear that we want them to stop, or be closely regulated, and for people to be held accountable for the inappropriate and unlawful treatment of vulnerable people.

Then suddenly, we were in the midst of the COVID-19 global pandemic, and 2019-20 became a year like no other. On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency in Queensland in response to the COVID-19 pandemic. Restrictions were placed on the Queensland community, imposing social distancing, limiting people's movement outside of their homes, limiting social gatherings and other social and sporting activities. These restrictions were progressively tightened over the following weeks.

A significant concern about the social restrictions that were quite properly introduced by the Chief Health Officer in response to the pandemic, was how they would affect people with impaired decision-making capacity and whether they would experience greater limitations of their rights and freedom of movement than other members of the community. Also, there were concerns about how the lockdowns would impact the mental and psychological wellbeing of people with impaired capacity, considering their emotional and psycho-social vulnerabilities.

Very early in the Queensland Government's response to COVID-19, Queensland Health, with support from the Department of Communities, Disability Services and Seniors and the Department of Housing and Public Works established two COVID-19 Working Groups: one for disability and another for residential aged care. The working groups included a range of representatives from the aged care and disability sectors, including peak bodies, providers, advocates and consumers.

Queensland Health used the meetings to keep sector stakeholders abreast of developments and to receive feedback on the implementation of health directives. The Working Groups contributed to improved communication and support of the government's COVID-19 response measures and helped identify gaps in information and guidance to the community and service providers about the virus and the interpretation and application of the health directives.

Queensland Health and the Chief Health Officer demonstrated strong leadership during this very challenging and stressful period. It has been a privilege to observe the work of senior Queensland Health staff in leading these Working Groups and to be part of what, I think, has been an exemplary collaboration process — bringing people with wide-ranging skills and knowledge to the table, genuinely listening to the issues that were being raised and being prepared to actively address them.

While dealing with the COVID-19 pandemic, my office was also working on a project that I have not referred to publicly, until this year — a review of the Public Trustee's fees and charges for financial administration clients. This project commenced last financial year and has taken some time to complete due to the complexity of the issues it examined and the limited resources of my office.

I decided to undertake this project for a number of reasons. For some years, people under financial administration with the Public Trustee, their families and supporters had been raising concerns with the office of the Public Advocate about the level and types of Public Trustee fees and charges and their negative impact on people's financial outcomes.

A key issue related to people under financial administration with the Public Trustee who owned their own home, but had few other assets and very limited income, such as a pension. Many of these Public Trustee clients were unable to pay the Public Trustee's fees without diminishing their limited cash assets. Ultimately, the fees resulted in the clients having insufficient money to properly maintain their own homes, at which time, they would be advised that their home would need to be sold and they would have to move into alternative accommodation.



A number of people provided documents and records to my office which were examined to test the validity of those concerns.

The information revealed that financial administration clients who are considered to have the ability to pay the Public Trustee's fees and charges are charged a multiplicity of fees. The assessment of a client's ability to pay the fees is not based on their income, but their assets. For those who own their own homes but have a low income, the fees appeared to be crippling. For example, the Personal Financial Administration Fee for people living fairly independent lives in the community can routinely be assessed at the top level of \$9,127, per year, which amounts to 37 percent of the individual rate for the Disability Support Pension of \$24,551.80 (which includes extra pension and energy supplements). This is only one of the fees and charges that would be applied to an administration client with this financial and asset profile.

The Public Trustee has a fee rebate policy which limits the amount of fees a person is expected to pay to no more than five percent of their assets. Also, under a separate hardship policy, no fees are charged to a client with less than \$5,000 in cash assets. However, to benefit from the fee rebate, the value of the client's house must be very low. For example, if the person's house is worth \$300,000 (the median house price in Brisbane at the time of writing was \$673,000), they will not receive any fee rebate unless their fees exceed \$15,000, or until their cash assets are below \$5,000. These outcomes were concerning because many people under administration with the Public Trustee and their supporters had a genuine and reasonable expectation that their assets and regular income would support their (usually modest) lifestyles well into the future. However, the fees many paid resulted in significant negative impacts on their lifestyle and potentially their wellbeing.

Due to my statutory functions, I am uniquely positioned to examine issues beyond the strict legality or administrative fairness of individual Public Trustee decisions, practices and policies, including examining the reasonableness and fairness of the outcomes for clients in the broader context of their rights and interests, vulnerabilities and quality of life.

As a result of all of these considerations, I decided to prepare a systemic report about the Public Trustee's fees and charges for administration clients. I expect to complete the report later in 2020. During the year I have liaised closely with the Public Trustee and his staff, who have provided a great deal of assistance in providing explanations and information for my inquiries into these matters. I acknowledge the responsiveness of the Public Trustee to my requests for information and the various concerns I have raised during the project.

This is also the last annual report I will deliver in the term of my current appointment. Accordingly, it is appropriate that I also reflect on what has been achieved during my term.

Systemic advocacy roles pose challenges, in terms of measuring performance and achievements. Many factors affect when and why governments are receptive to policy change that are outside of my sphere of influence. There are matters of timing, including where we are in the electoral cycle. Government priorities, in terms of what other policy issues are competing for limited government funding also play a role. The level of community and media interest in the issue can also be a major factor in driving policy change, especially if there has been a particular incident or crisis that has caused community concern. During my over four years in this role, I think we have made good policy progress on issues such as the National Disability Insurance Scheme Quality and Safeguards Commission acknowledging the complex health needs and vulnerabilities of people with disability and initiating a program to manage risks to their health and wellbeing. We have also been successful in advocating for a framework to regulate the use of restrictive practices in residential aged care. It might not have all of the safeguards that we would like, but it represents significant progress on having no regulation, or even recognition, of these practices, prior to 2019.

As I am writing, the Mental Health Review Tribunal is also trialling electronic recording of its proceedings, another systemic change that we have actively advocated for. While these developments may seem to be small gains, all of these systemic changes will potentially have significant and positive impacts on the rights, interests and daily lives of people with impaired decision-making capacity.



Achieving systems change can be difficult and often requires me to have challenging conversations with people. I endeavour to ensure that these testing engagements are respectful and that I come to them with a collaborative approach and a clear understanding of other perspectives on the issue. Despite the nature of my work, I consider that I have developed positive working relationships with many of the people from other agencies with whom I have worked over the period of my appointment.

I also acknowledge and thank the Attorney-General for giving me the opportunity to perform such a satisfying and worthwhile role.

Finally, I acknowledge and thank the small but dedicated team of staff who work so hard to support me in the work of our office. They each demonstrate a personal commitment and sense of responsibility for the work we do and to the people whose interests we seek to represent and protect. Again, I thank them for their hard work, their care in producing material and submissions of such a high quality, and their loyalty to people with impaired decision-making capacity. They are a critical element of every small gain or success we achieve.

A handwritten signature in black ink, reading "Mary Burgess". The signature is fluid and cursive, with a large loop at the end of the last name.

**Mary Burgess**  
Public Advocate





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# The Public Advocate

## Legislative functions

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

The Public Advocate has the following functions:

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

In exercising these functions,<sup>1</sup> the Public Advocate is required to apply the general principles outlined in Schedule 1 of the *Guardianship and Administration Act*.

The Public Advocate has power to:

- do all things necessary or convenient to perform the Public Advocate's functions; and
- intervene in a proceeding before a court or tribunal, or in an official inquiry, involving the protection of the rights or interests of adults with impaired decision-making capacity.<sup>2,3</sup>

The Public Advocate has the right to all information:

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

The Public Advocate may prepare a report about an issue arising from the performance of the Public Advocate's functions and provide a copy of the report to the Attorney-General, who must table the report in the Queensland Parliament.<sup>5</sup>

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

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

<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) s209.

<sup>2</sup> *Ibid* s210.

<sup>3</sup> With leave of the court, tribunal or person in charge of the inquiry and subject to any terms imposed.

<sup>4</sup> *Guardianship and Administration Act 2000* (Qld) s210A.

<sup>5</sup> *Ibid* s209A.



# Office of the Public Advocate

## **Vision**

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

## **Purpose**

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

## **Values**

### Relationships and influence

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

### Knowledge and leadership

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

### Courage and integrity

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

## Operating environment

### COVID-19

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency in Queensland in response to the COVID-19 pandemic. As a result of the public health emergency, restrictions were placed on the Queensland community, imposing social distancing, limiting people's movement outside of their homes, limiting social gatherings and other social and sporting activities. These restrictions were progressively tightened over the following weeks.

At the time of preparing this report, the Queensland Government's health response to COVID-19, led by Queensland Health, has been an overall success. In addition to its frontline health response, the government's approach to the pandemic included targeted responses for key cohorts, including people living with disability and mental illness, as well as older Queenslanders, particularly those living in residential aged care.

The COVID-19 pandemic triggered a range of unplanned activities for the Public Advocate in 2020. The Public Advocate actively monitored and contributed to the responses of government agencies and non-government organisations to the pandemic. The focus of the Public Advocate's work was to ensure that the rights of people with impaired decision-making capacity were upheld to the greatest extent possible, and that COVID-19 responses addressed the needs of people with impaired decision-making capacity. The Public Advocate made submissions to Parliamentary Inquiries and Committees, contributed to COVID-19 working groups and engaged with a range of stakeholders about regulations, health directions, policies, practices and other responses and actions. Most of this work focused on the health, aged care and disability sectors, however it also extended to mental health, justice, guardianship and housing.



The Public Advocate will continue this work for the duration of the pandemic so that the rights and interests of people with impaired capacity are considered and upheld in all COVID-19 responses.

## *Human rights*

During the first half of the 2019-20 financial year, our office prepared for the commencement of the *Human Rights Act 2019* (Qld). This work included staff training and ensuring that all policies and processes were compliant with the Act.

The *Human Rights Act* commenced on 1 January 2020, with all government agencies, including our office, obligated to comply with its provisions. In line with the functions of the Public Advocate, the commencement of the *Human Rights Act* triggered additional monitoring and engagement activities for the Public Advocate in relation to the operation of the Act and its impacts for people with impaired decision-making capacity. This work will continue in the coming year.

## *Royal Commissions*

Two already established Royal Commissions continued during 2019-20. These were the:

- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; and
- Royal Commission into Aged Care Quality and Safety.

These Royal Commissions have provided people with disability, people receiving aged care services, their families, carers and supporters with an opportunity to share their stories and concerns with the Royal Commissions.

Many of the people whose interests are the subject of the Royal Commissions may experience impaired decision-making capacity. Consequently, the Public Advocate has closely monitored the Royal Commissions and their exploration of systemic issues affecting people with impaired decision-making capacity. The specific activities undertaken by the Public Advocate in relation to the Royal Commissions are outlined later in this report.

## *The National Disability Insurance Scheme*

The roll out of the National Disability Insurance Scheme (NDIS) in Queensland was extended until June 2020 due to a lower than projected number of participants accessing the scheme. The extension of the transition phase of the scheme resulted in the Public Advocate continuing the reporting and monitoring activities associated with the NDIS roll-out across Queensland.

On 1 July 2019, the NDIS Quality and Safeguards Commission (NDIS Q&S Commission) officially commenced operations in Queensland. The NDIS Q&S Commission is an independent agency established to improve the safety and quality of NDIS supports and services.

The NDIS Q&S Commission is responsible for registering and regulating the NDIS, which includes:

- monitoring compliance with the NDIS Code of Conduct and Practice Standards;
- receiving and responding to complaints from NDIS participants;
- recording and monitoring serious and reportable incidents;
- monitoring the use of restrictive practices by NDIS service providers with the aim of reducing and eliminating these practices;
- contributing to workforce screening and development; and
- facilitating information sharing between critical State and Federal government systems.

The Public Advocate regularly engages with the NDIS Q&S Commission about issues relevant to the operation of the NDIS in Queensland, especially as they relate to people with impaired decision-making capacity.



## Guardianship and administration system reforms

The operation of Queensland's guardianship system is expected to change in November 2020 when the *Guardianship and Administration and Other Legislation Amendment Act 2019 (Qld)* comes into force. Upcoming changes to the guardianship and administration system include:

- improved alignment of the general principles with the *Convention on the Rights of Persons with Disabilities*;
- greater recognition of informal decision-making support;
- the introduction of the *Guidelines for the Assessment of Capacity*;
- strengthening the eligibility requirements for an attorney under an enduring power of attorney;
- clarifying the level of capacity that is needed for a person to execute an enduring power of attorney and/or advanced health directive;
- strengthening the restrictions associated with attorneys and administrators entering conflict transactions;
- greater power for the Queensland Civil and Administrative Tribunal (QCAT) to order an attorney to pay compensation when they fail to comply with their obligations;
- broadening whistle-blower protections for people who disclose confidential information about the potential abuse, neglect or exploitation of an adult with impaired decision-making capacity; and the
- development of new Enduring Power of Attorney and Advance Health Directive forms.

The Public Advocate will monitor the implementation of the reforms, including the adoption of the new enduring forms.

## People and processes

### Our team

Our team is committed to supporting the Public Advocate to improve the lives of people who experience impaired decision-making capacity through systems advocacy.

The Public Advocate is an independent statutory position under the *Guardianship and Administration Act* and appointed by the Governor in Council on the recommendation of the Attorney-General. Mary Burgess was appointed to the role of Public Advocate in October 2016. Her current term concludes in October 2020.

Staff that support the Public Advocate are employed by the Department of Justice and Attorney-General (DJAG) and appointed under the *Public Service Act 2008 (Qld)*. Our office relies on DJAG for core business supports, such as information technology and human resource services.

### Code of Conduct and public sector values

The following Public Service Values guide the way we work:

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

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

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



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

We ensure the administrative procedures and management practices of our office have proper regard to the ethics, principles and values, the Code and other standards of practice.

### **Workforce planning and performance**

Five full-time officers support the Public Advocate. The permanent separation rate of the office in 2019-20 was zero percent as no permanent employees resigned from the office.

Our workforce planning processes aim to align the business needs of the office with the skills and abilities of staff. The Public Advocate is committed to providing staff with professional development opportunities to improve their knowledge and skills so that they can help to protect and advance the interests of people with impaired decision-making capacity. Staff attended a range of learning and development opportunities including conferences, events and training sessions in 2019-20.

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

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

### *Business planning and performance*

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

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

The Public Advocate has a Business Plan that helps guide the work of the office. The business plan is reviewed annually in order to define and prioritise our work. The Public Advocate's 2019-20 business plan outlined the actions and activities that would be undertaken by our office identifying and responding to systems issues across a number of sectors.



## Key areas of focus in the 2019-20 Business Plan

### Disability

- continuation of the NDIS rollout and commencement of the NDIS Quality and Safeguards Commission in Queensland;
- improving the health care provided to people with disability, particularly those with cognitive impairment;
- the Forensic Disability Service;
- the need for adequate and recurrent funding and advocacy support; and
- the Disability Royal Commission.

### Older people

- aged care system reforms;
- improving the restrictive practices framework for residential aged care; and
- abuse of older persons.

### Health

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

### Mental Health

- Chief Psychiatrist policies, guidelines and other oversight and monitoring mechanisms;
- appropriate models of care for people with a dual diagnosis of disability and mental illness and people with disability detained in an Authorised Mental Health Service; and
- electronic recording of Mental Health Review Tribunal proceedings.

### Law and justice

- commencement of the *Human Rights Act*; and
- right of people with impaired decision-making capacity to relationships and sexuality.

### Guardianship and administration

- delivery of public guardianship and administration services;
- guardianship and administration system reforms;
- Public Trustee fees and charges for administration clients; and
- enduring documents.

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

Also, there is often a significant time lag between undertaking advocacy activities and seeing an observable impact in a particular system. Progress in the reform of systems can also be incremental, requiring a long-term strategy. Progress towards positive systems change can be impacted by many factors including political receptivity, community and media interest or concern, competition for government resources and stakeholder relationships. System changes are often driven by a combination of factors, with advocacy being just one.





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

This annual report provides an overview of the activities undertaken by the Public Advocate in 2019-20 that demonstrate progress towards achieving positive system changes to protect the rights and interests, and improve the lives, of people with impaired decision-making capacity.

Over the past year, the Public Advocate continued to work collaboratively with stakeholders on specific systemic issues to advance the interests of people with impaired decision-making capacity. The Public Advocate participated in several working and advisory groups (see page 9) and made 25 submissions on a wide range of issues to various government and parliamentary reviews and inquiries. Many of those submissions are discussed under the specific sector subject areas in this report. Appendix 1 lists the submissions that are publicly available.

## *Operations during the COVID-19 pandemic*

During the COVID-19 pandemic, our office adjusted its operations and processes to ensure work continuity. We also optimised flexible and remote working arrangements for staff.

Our office continued to operate well during this period. This was partially due to the office being a small non-service delivery agency. It was also due to the commitment of staff to the work of the office, the technology available that supported staff working flexibly/remotely and the willingness of staff to adapt to the changing environment.

The Queensland Public Sector began transitioning people back into their workplaces from mid-June. Our office undertook a series of planning activities to help ensure a COVID-safe workplace to support the transition of staff back to the office. The purpose of this planning was to protect staff and others at our workplace from the risk of harm, including the risk of exposure to COVID-19, as far as reasonably practicable.

The temporary requirement for our staff to work from home provided several learnings and opportunities, including the benefits of offering staff more flexible working arrangements, improved staff wellbeing and new ways of working together remotely.

To help ensure the ongoing health and wellbeing of staff, our office will stay informed about the prevalence of COVID-19, changing community restrictions and the official advice from the Queensland Government in relation to the pandemic.

## *Governance*

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

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





Our office fulfilled DJAG's corporate governance and accountability requirements in 2019-20. This included additional workforce planning and risk management as a result of the COVID-19 pandemic.

Our office was not subject to any departmental or external reviews in 2019-20.

### *Information systems and recordkeeping*

Our office uses DJAG's records management system to manage electronic and physical documents and follows DJAG policies and processes for record keeping. In 2019-20, the office continued to improve record keeping processes to enhance compliance with the *Public Records Act 2002* and Queensland State Archives Records Governance Policy. Our office abides by the general retention and disposal schedule developed by Queensland State Archives.

Staff are introduced to our record keeping systems, their record keeping responsibilities and related department policy and expectations upon commencement with the office. Our office continuously seeks ways to transition from paper-based records to digital recordkeeping.

## Engagement and consultation

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

Stakeholder engagement and consultation is critical to performing the functions of the Public Advocate. It helps our office gain knowledge and understanding of the lived experience of people with impaired decision-making capacity and is also a means by which we influence and effect positive system changes.

The Public Advocate's stakeholder engagement strategy identifies our key stakeholders and aims to ensure that we effectively engage with the wide range of sectors that engage with and support people with impaired decision-making capacity. The strategy outlines the principles and values that underpin our engagement with stakeholders, and a range of engagement activities to develop and foster our relationships with stakeholders.

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

Throughout 2019-20, the Public Advocate participated in regular meetings with a range of stakeholders including: the Public Guardian and Deputy Public Guardian, the Public Trustee, the President and representatives of QCAT, the President and Deputy President of the Mental Health Review Tribunal (MHRT), Chief Psychiatrist, Director Forensic Disability, the Human Rights Commission, Disability Connect Queensland and the Community Visitor Program (Office of the Public Guardian). These meetings were in addition to working/advisory group meetings.

The Public Advocate spoke at events and participated in meetings and other forums on issues impacting people with impaired decision-making capacity. This year the COVID-19 pandemic resulted in a number of speaking engagements and events being cancelled. Appendix 2 lists the Public Advocate's speaking engagements and other consultations, workshops and events in which the Public Advocate and staff of the office participated in 2019-20.



The Public Advocate and staff of the office also attended a range of consultations, workshops and events that provided opportunities to advance systemic advocacy for people with impaired decision-making capacity, contribute to broader community and policy debates, and develop and maintain our relationships with stakeholders.

In 2019-20, the Public Advocate was part of the following working and advisory groups. Appendix 3 provides an overview of the purpose of each of the groups.

Lead agency	Working/advisory group
Commonwealth Department of Health	Aged Care Restraint Advisory Group
New South Wales Civil and Administrative Tribunal (Chair)	Australian Guardianship and Administration Council
Public Advocate (Coordinator)	Queensland Guardianship and Administration Council
Queensland Health	COVID-19 Working Groups – disability and aged care
Metro North Hospital and Health Service	Halwyn Centre Multi-Agency Working group
Metro South Hospital and Health Service	Disability Action Committee
Legal Aid Queensland	Mental Health Service Planning Working Group
Elder Abuse Prevention Unit	Elder Abuse Prevention Unit Reference Group
Council on the Ageing	Seniors Interest Group
Public Trustee	Customers First Government Reference Group Trust and Transparency Working Group
Department of Communities, Disability Services and Seniors	Queensland: An Age-Friendly Community Senior Officers Group
Queensland Law Society	Health and Disability Law Committee Elder Law Committee
DJAG	NDIS Transition Working Group Guardianship Implementation Reference Group Human Rights Implementation Working Group
Queensland Ombudsman	Public Interest Disclosures Agency Network



# Disability

## COVID-19 pandemic

The COVID-19 pandemic had significant impacts on the lives of people with disability, particularly those residing in congregate care settings including shared homes, boarding houses and hostels. In the early stages of the pandemic, many essential supports for people with disability were interrupted or suspended as service providers struggled with how to respond to the public health emergency and protect their staff and clients. After an initial period of adjustment, and significant guidance from Commonwealth and State Governments and the NDIS Quality and Safeguards Commission, the way that many essential supports were provided to people with disability significantly changed to comply with the COVID-19 public health measures. Significant infection control measures were introduced, including the use of personal protective equipment and limits on the number of locations where individual support workers could provide services.

Between March and May 2020, the Public Advocate wrote letters to a number of Commonwealth and Queensland Government Ministers (including to the Queensland Deputy Premier and Minister for Health and Minister for Ambulance Services, the Hon Dr Steven Miles MP and the Minister for Communities and Minister for Disability Services and Seniors, the Hon Coralee O'Rourke MP) about the urgent need for:

- essential disability support workers to access the homes of people with disability to provide necessary daily supports;
- NDIS participants and disability support workers being able to access personal protective equipment; and
- additional supports to help people with disability access mainstream health services during the pandemic.

Following this communication, Queensland Health established a COVID-19 Disability Working Group. The Working Group is led by Queensland Health and is comprised of a range of government and non-government disability sector stakeholders. The group provides Queensland Health with strategic and operational advice about health responses to COVID-19 that are responsive to the needs of people with disability, their supporters and service providers. Queensland Health's engagement with the disability sector via this Working Group during the COVID-19 pandemic has been a very positive development.

The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020* was introduced into the Queensland Parliament on 19 May 2020. The Bill proposed amendments to over 20 pieces of legislation in response to the COVID-19 health emergency, including the *Disability Services Act 2006* (Qld) and the *Forensic Disability Act 2011* (Qld). The Bill was passed on 21 May 2020.

The amendments to the *Disability Services Act* provide for the locking of gates, doors and windows by disability service providers to ensure a 'relevant adult'<sup>6</sup> complies with a public health direction. It also provides disability service providers with immunity from criminal and civil liability if the provider:

- acts honestly and without negligence;
- acts in compliance with the policy made by the department; and
- takes reasonable steps to minimise the impact on a person living at the premises who is not a relevant adult with an intellectual or cognitive disability.

The amendments to the *Forensic Disability Act* allow the service administrator to refuse entry to health practitioners, allied health and social workers, as well as legal and other advisors. The administrator must be satisfied that these actions are in compliance with a direction under the *Public Health Act 2005* (Qld). It also provides for the Senior Practitioner to change the development plans of clients of the Forensic Disability Service and stop all community treatment (i.e. external

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<sup>6</sup> 'Relevant adult' is a person with an intellectual or cognitive disability who is at risk of failing to comply with a public health direction because of their disability. See *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Qld) s 19, amending s 220B(6) of the *Disability Services Act 2006* (Qld).



outings) until 31 December 2020 (if the senior practitioner considers the community treatment would pose a risk to the health, safety or welfare of the forensic disability client or another person having regard to the purposes of that Part of the Act). It provides that the Senior Practitioner or other authorised person who changes the plan does not have to comply with the sections of the Act — requiring a written record of the change and the reasons for it, and that the changes and the reasons for them be discussed with the resident/client and their guardian or informal decision-maker — ‘if compliance would pose a risk to the health, safety or welfare of the client or another person’.<sup>7</sup>

A key concern of the Public Advocate was the absence of any identified or demonstrated need for these amendments. Other than general statements about protecting the health, safety and wellbeing of people with disabilities and the broader community, there was no clear explanation of the purpose of the amendments and why they were needed. The Public Advocate was also concerned about such a significant restriction on the freedom of movement of people with disability being introduced when the Queensland Government was slowly easing community restrictions on movement and social interactions under the COVID-19 Public Health Directive.

In the Public Advocate’s view, the amendments have the potential to stigmatise people with disability by suggesting that there is a need to lock them in because they are uncooperative or unreliable, and likely to spread the virus in the community unless their movement is restricted. The amendments permitting the locking of gates, doors and window feed negative perceptions in the community of the ‘otherness’ of people with disability and are misaligned with modern disability rights.

As we are unlikely to see the end of the COVID-19 pandemic for some time, the amendments may contribute to people with disability being viewed as a threat to the health of other members of the community, particularly as other COVID-19 community restrictions are being eased. These perceptions could cause further alienation and isolation of people with disability in Queensland communities. In May 2020, the United Nations released a report recognising that the COVID-19 pandemic was intensifying inequalities for people with disability and called for a ‘disability-inclusive recovery’.<sup>8</sup> The COVID-19 emergency amendments were not consistent with Australia’s obligations under the *Convention on the Rights of Persons with Disabilities* or the approach to COVID-19 recovery advocated by the United Nations.

If people with disability have their ability to move freely in the community and exercise their autonomy and agency limited, they will have fewer opportunities to use and practise their social and other skills and self-management. The potential of these restrictions to cause a deterioration in the ability of some people with disability to manage themselves and exercise agency in their lives is a serious concern.

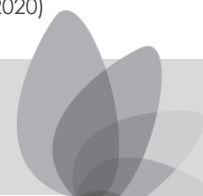
There are also the negative psychological and psychiatric impacts of preventing people with disability from leaving their homes and the effects of social isolation that accompany the COVID-19 restrictions. Many people in the Australian community who do not live with disability and have much stronger social networks have been experiencing significant negative effects on their mental health and wellbeing from the COVID-19 community restrictions. We should expect that people with disability subject to these additional restrictions will experience more serious impacts.

The Public Advocate also raised several concerns relating to the lack of reporting, monitoring and oversight of the exercise of these powers under the new provisions. The most concerning and disappointing was the lack of consultation with disability, legal, human rights and advocacy groups in relation to the amendments effected by the Bill. The Bill was introduced without prior stakeholder consultation at a time when there was a low prevalence of COVID-19 in Queensland and community restrictions were being eased. This environment did not support the case for bypassing appropriate stakeholder consultation.

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<sup>7</sup> *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020 (Qld) s 21*, amending s 149B(6) of the *Forensic Disability Act 2011 (Qld)*.

<sup>8</sup> United Nations, ‘Coronavirus and human rights: New UN report calls for disability-inclusive recovery’ (UN News, 6 May 2020) <<https://news.un.org/en/story/2020/05/1063242>>.



The Public Advocate raised concerns about this legislation with the:

- Minister for Communities and Minister for Disability Services and Seniors;
- Attorney-General, Minister for Justice and Leader of the House;
- Queensland Human Rights Commissioner;
- Disability Discrimination Commissioner; and the
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The Public Advocate subsequently received advice from the Attorney-General that she had written to her Ministerial colleagues to reiterate the importance of considering human rights issues when developing legislation and policy in accordance with the *Human Rights Act*. The Public Advocate welcomed the Attorney-General's actions.

## Royal Commission into violence, abuse, neglect and exploitation of people with disability

During this year, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) conducted public hearings on topics including inclusive education, the experience of living in a group home or congregate setting, and health care and services for people with cognitive disability. The Commission's public hearings were put on hold in March 2020 due to the COVID-19 pandemic.

### *Confidentiality of submissions*

The Public Advocate has had concerns about the confidentiality afforded to people coming forward to share their stories of violence, abuse, neglect and exploitation with the Disability Royal Commission since its commencement. The *Royal Commission Act 1902* (Cth) allows for submissions made to the Royal Commission to be treated as confidential for the duration of the Royal Commission. However, after the Disability Royal Commission's final report is tabled in the Australian Parliament, all proceedings and submissions (including confidential submissions) can potentially be accessed by members of the public, organisations and media agencies under the *Freedom of Information Act 1982* (Cth).

In February 2020, the Public Advocate and a number of interstate Public Guardians and Advocates wrote to the Commonwealth Attorney-General outlining their concerns about the confidentiality of submissions made to the Disability Royal Commission and requesting the Attorney-General urgently amend the *Royal Commission Act* and extend the confidentiality protections in Section 60N of the Act, as occurred for the Royal Commission into Institutional Responses to Child Sexual Abuse. The Public Advocate received a reply from the Attorney-General's office advising that the request was being considered. The extension of the confidentiality protections is also supported by the Chair of the Disability Royal Commission, the Hon Ronald Sackville AO, QC.<sup>9</sup>

### *Justice workshop*

The Public Advocate participated in a Justice Workshop co-chaired by Commissioner Alastair McEwin AM and Special Senior Counsel Assisting, Chris Ronalds AO SC in September 2019. Workshop participants discussed the barriers and challenges experienced by people with disability in the criminal justice system, with a specific focus on policing policies, arrest, charge, prosecution and legal and court processes. Issues relating to the involvement of people with disability as witnesses and complainants were also explored.

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<sup>9</sup> Royal Commission into the Violence, Abuse, Neglect and Exploitation of People with Disability, *Transcript – 5 November 2019*, accessed online at <https://disability.royalcommission.gov.au/sites/default/files/2019-12/transcript-5-november-2019.pdf>, February 2020.



## Public Advocate submissions

In June 2020, the Public Advocate made a submission in response to the Disability Royal Commission's Emergency Planning and Response Issues Paper. The submission outlined the Public Advocate's concerns about the Queensland Government's COVID-19 emergency legislative amendments to the *Disability Services Act* and the *Forensic Disability Act*. The submission highlighted that the legislative amendments did not align with a 'disability inclusive' response to the COVID-19 pandemic. It also highlighted the lack of inclusion of people with disability or their advocates in COVID-19 emergency planning and response, and the potential for the amendments to breach the rights of people with disability without reasonable justification.

Further information about the Public Advocate's concerns about the legislative amendments can be found on page 10.

In 2019-20, the Public Advocate worked to develop several submissions to the Disability Royal Commission on topics such as health care, criminal justice, restrictive practices, community attitudes and mental health. Work on these submissions will continue in 2020-21.

## Hearing into health care and services for people with cognitive disability

The Royal Commission's Public Hearing Number 4 was held in Sydney in February 2020. The hearing focussed on the provision of health care or services for people with cognitive disability, including people with intellectual disability, autism and/or an acquired brain injury.

On the first day of the hearing, Senior Counsel Assisting the Royal Commission referred to the Public Advocate's 2016 report *Upholding the Right to Life and Health: A review of the deaths in care of people with disability*. Information from the *Upholding the Right to Life and Health* report was used alongside similar research conducted interstate to highlight the health inequities that exist for people with cognitive disability. Senior Counsel advised that during the hearing, the Royal Commission would "explore the disparity in life expectancy for people with cognitive disability and the general population to understand its causes and to ask whether it reveals serious neglect of the health of people with cognitive disability".<sup>10</sup> The *Upholding the Right to Life and Health* report subsequently featured in an ABC News media report that day.

## National Disability Insurance Scheme

The Public Advocate made a submission to the Department of Social Services in October 2019 about the establishment of a NDIS Participant Service Guarantee and the removal of 'red tape' within the NDIS. The Public Advocate supports the development of an NDIS Participant Service Guarantee because it will set standards for shorter timeframes for the development and review of NDIS plans. The Public Advocate also provided feedback on the proposed principles for the Service Guarantee.

The Public Advocate continued to monitor Queensland's transition to the NDIS and actively participated on the DJAG NDIS transition Working Group, which provides oversight of the NDIS transition for DJAG. Further information about this working group can be found on page 36.

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<sup>10</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 4: Health care and services for people with cognitive disability*, Transcript Day 1: Health Care, Sydney, 18 February 2020, <<https://disability.royalcommission.gov.au/publications/transcript-day-1-health-care-sydney>>.





# NDIS Quality and Safeguards Commission

During 2019-20, the Public Advocate continued to work collaboratively with the NDIS Q&S Commission, both at the state and national levels.

## *Availability of State and Territory data*

As part of its quality and safeguarding role, the NDIS Q&S Commission collects a wide range of data about NDIS operations, including the number of participants, complaints, engagement activities, registration of service providers, reportable incidents and behaviour support information. Presently, the NDIS Q&S Commission only publishes this information on a national basis.

In May 2020, the Public Advocate wrote to the NDIS Q&S Commissioner on behalf of all the Public Advocates and Guardians across Australia requesting that the NDIS Q&S Commission publish more State and Territory level data about complaints, engagement, reportable incidents and behaviour support planning. Access to data at the State and Territory level would assist Public Advocates and Guardians to monitor trends in their jurisdictions.

The NDIS Q&S Commissioner has committed to consulting with Public Advocates and Guardians about the content of reports that are published as part of the NDIS Q&S Commission's data and analytics function. The NDIS Q&S Commission will collect national-level data from 1 December 2020.

## *Causes and contributors to the deaths of people with disability*

In February 2020, the NDIS Q&S Commission released a research report titled *Causes and contributors to deaths of people with disability in Australia*. The research drew on previous reviews of the deaths of people with disability in Queensland, New South Wales and Victoria. Data in the Public Advocate's 2016 report, *Upholding the Right to Life and Health: A review of the deaths in care of people with disability in Queensland* informed this research.

In response to the research, the NDIS Q&S Commission has committed to implementing a series of practice and regulatory-based initiatives focussing on the underlying causes of preventable deaths of people with disability living in supported accommodation. It will also analyse and disseminate information about deaths in care reported by service providers, to identify trends or systemic issues, on an ongoing and nationally consistent basis.

The NDIS Q&S Commission does not have a specific death review function that requires it to review and report on all notified deaths. However, it has the power to investigate individual deaths, or a series of deaths. Choosing to exercise these powers is at the discretion of the NDIS Q&S Commissioner.

## *Death of NDIS participant Ann-Marie Smith*

Ann-Marie Smith was a 54-year-old woman living in Adelaide who received NDIS supports. She died in April 2020 as a result of long-term neglect by her disability support worker and service provider.

In May 2020, the Public Advocate wrote to the NDIS Q&S Commissioner highlighting the need for the NDIS safeguarding system to have 'flags' for risk. Such 'flags' might be particularly necessary for NDIS participants like Ms Smith, who were vulnerable and receiving a high level of disability supports. The aim of 'flags' for risk is to trigger an intervention before a person suffers harm. The Public Advocate also highlighted some of the findings from the *Upholding the Right to Life and Health* report and suggested a range of accountability processes that could be built into the NDIS.

In May 2020, the NDIS Q&S Commissioner appointed the Hon Alan Robertson SC to conduct an independent review into the circumstances of Ms Smith's death and the Commission's regulation of her disability support provider.





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

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

In September 2019, Queensland Health advised that there were 412 people with disability who were medically ready for discharge residing long-term in public health facilities.<sup>11</sup> The department was unable to provide the number people with intellectual disability or cognitive impairment in this cohort. Despite the large number of people still living long-term in public health facilities (when they were medically ready for discharge), the Public Advocate was advised that the Queensland Government's *Joint Action Plan – Transition of long-stay younger people with disability from Queensland public health facilities*<sup>12</sup> would not extend beyond June 2019.

In response to the COVID-19 pandemic, Queensland Health commenced a strategy to expediate the discharge of long-stay patients who were medically ready. This effort resulted in 392 long-stay patients with disability being discharged from Queensland Health facilities within two months, while work continued to discharge another 197 patients. The Queenslanders Disability Network was engaged to provide independent support and advocacy for patients, their families, and guardians during the pre-planning, discharge and transition to community phases of the discharge process.<sup>13</sup>

The Public Advocate welcomed the effort by multiple state government agencies and the NDIS, to discharge such a large number of patients with disability from hospital and other health facilities to community living. Queensland Health will track and record returns to hospital and emergency room presentations to monitor and measure the health outcomes for this cohort.<sup>14</sup>

In line with the recommendations of the *Upholding the Right to Life and Health* report, the Public Advocate continued to advocate for a coordinated approach between Queensland Health, Hospital and Health Services (HHSs), general practitioners, Primary Health Networks and the NDIS to ensure that people with disability and complex health conditions can maintain their health and wellbeing while living in the community.

The mainstream health system plays an important role monitoring health and providing necessary health supports to people with disability and complex health conditions living in the community. Ideally, people with disability and complex health conditions should have a regular general practitioner who completes an annual health assessment that is used to develop an annual health care plan for the person. The plan should include details about the coordination of the person's health care between their general practitioner, private medical specialists and other important health and allied health providers. The plan should also outline the intended arrangements for the provision of emergency and specialist care via the local HHS.

The plan should also include an annual influenza vaccination and other relevant vaccinations, along with other appropriate specialist appointments, depending on the person's health conditions. There is no designated person or position, either under the NDIS or in the mainstream health system, who is responsible to support people with disability to implement their annual health plans. Ideally, this support should be provided by a specialist supports coordinator funded by the NDIS. The mainstream health system should also have health liaison or coordination positions that work with the supports coordinators to assist them to implement clients' health plans.

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<sup>11</sup> Letter from Ms Bronwyn Nardi, Assistant Deputy Director-General, Strategy Policy and Planning, Department of Health to Ms Mary Burgess, Public Advocate, 26 September 2019.

<sup>12</sup> Letter from Ms Clare O'Connor, Director-General, Department of Communities, Disability Services and Seniors to Ms Mary Burgess, Public Advocate, 29 August 2019.

<sup>13</sup> Letter from Ms Bronwyn Nardi, Assistant Deputy Director-General, Prevention Division, Queensland Health to Ms Mary Burgess, Public Advocate, 18 August 2020.

<sup>14</sup> Ibid.



## Comprehensive Health Assessment Program

The Public Advocate's *Upholding the Right to Life and Health* report recommended that people with disability should have access to regular check-ups by their general practitioner and an annual health assessment.<sup>15</sup> The Comprehensive Health Assessment Program (CHAP) is a tool that can assist in the development of health care plans for people with disability and complex health conditions. The CHAP helps to examine and document the health history of a person with disability and provide their general practitioner with prompts and guidelines relating to health issues.<sup>16</sup> The Department of Communities, Disability Services and Seniors (DCDSS) subsidises the licence fee for the CHAP tool so that it can be accessed free of charge by Queenslanders with disability and their health providers. DCDSS recently confirmed that the department will continue to fund the CHAP into the future and that an online version of the tool would soon be available.<sup>17</sup>

## Halwyn Centre

The Public Advocate continues to work alongside the residents, families and management of the Halwyn Centre,<sup>18</sup> the Public Guardian and the Metro North HHS to address issues associated with the ongoing operation of the centre and to support the safe transition to community living of individual residents if they make the decision to move.

In 2019-20, a multi-agency working group was established to provide a formal mechanism to address strategic and operational issues, and share information and advice relating to the future of the Halwyn Centre. More information about this group can be found in Appendix 3.

The Public Advocate was also involved in the Halwyn Centre advocacy and best practice project undertaken by the Queenslanders with Disability Network on behalf of Queensland Health. The project involved a range of activities designed to bring together key stakeholders to explore the opportunities for the transition of Halwyn Centre residents to community-based living, and to understand the critical aspects of best practice models of care, particularly care that supports residents' health and wellbeing. Stakeholders included families and other supporters of Halwyn residents, the National Disability Insurance Agency, the NDIS Q&S Commission, registered NDIS service providers, Queensland Health, independent disability advocacy organisations, the Public Guardian and the Metro North HHS. An online Halwyn Centre Forum was held in June 2020, at which the Public Advocate participated in discussions about best practice models of care.

Four residents have now transitioned from living long-term at the Halwyn Centre into purpose-built community accommodation, with disability and health-related disability supports provided for in their individual NDIS plans. Work is continuing to support other Halwyn residents and their families in their accommodation choices, whether that involves remaining resident in Halwyn or exploring other community living options.

## Disability advocacy

In September 2019, the Public Advocate provided feedback on the *Queensland Strategy – Disability Advocacy*,<sup>19</sup> for people with impaired decision-making capacity (released by DCDSS in July 2019). The Public Advocate supports Queensland's first disability advocacy strategy and welcomes the objectives of the strategy and the proposed approaches for achieving those objectives.

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<sup>15</sup> Public Advocate (Qld), *Upholding the Right to Life and Health: A review of the deaths in care of people with disability* (2016) p54.

<sup>16</sup> Department for Communities, Disability Services and Seniors, *Comprehensive Health Assessment Program (CHAP)*, July 2020 <<https://www.communities.qld.gov.au/disability-connect-queensland/service-providers/comprehensive-health-assessment-program-chap#:~:text=CHAP%20was%20developed%20by%20the,guidelines%20relating%20to%20health%20issues.>>.

<sup>17</sup> Letter from Ms Clare O'Connor, Director-General, Department of Communities, Disability Services and Seniors to Ms Mary Burgess, Public Advocate, 21 August 2020.

<sup>18</sup> The Halwyn Centre is operated by Queensland Health and is home to 39 long-term residents with intellectual and physical disabilities and complex health conditions.

<sup>19</sup> Queensland Government, *Queensland Strategy – Disability Advocacy – For people with impaired decision-making capacity* (2019), July 2019 <<https://www.publications.qld.gov.au/dataset/9ebd3998-44a0-423c-b796-a50452f1a94/resource/8c3a9385-0e9a-4bff-a7d5-df69c1743f20/download/qld-strategy-disability-advocacy.pdf>>.



The strategy commits to:

- improving the availability of disability advocacy;
- strengthening advocacy for people from Aboriginal and Torres Strait Islander communities and from culturally and linguistically diverse backgrounds;
- establishing a service delivery framework for disability advocacy, including complaints management processes;
- developing clear and consistent guidelines for funding, service standards and performance reporting for disability advocacy services;
- using data to identify trends and issues; and
- engaging with stakeholders to understand people's experiences and improve systems.

The Public Advocate supports the increased role of the Queensland Disability Advisory Council in monitoring and reporting on strategy implementation, and for the review of the strategy following advice from the Council and Queenslanders with Disability Network.

The progress of the strategy was a subject of discussion at the bi-monthly meetings between Disability Connect Queensland and the Public Advocate.

## Forensic Disability Service

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

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

At 30 June 2020, there were seven clients detained to the FDS. All seven were in the service the previous year (as at 30 June 2019). Another client was transferred out of the facility during 2019-20 for legal reasons.<sup>20</sup>

Three of the current clients have resided at the FDS for over 5 years, while four clients were moved to the service in 2018-19. The FDS clients who moved to the service in the past two years appear to be participating in a variety of programs. Work is being undertaken to transition three of those clients back into the community.<sup>21</sup>

During 2019-20, the Director of Forensic Disability and the administration of the FDS have made significant progress in their efforts to create a service that focuses on supporting clients to return to living in the community. Efforts continue to find appropriate ways to assist the FDS's long-term clients to transition out of the service.<sup>22</sup>

The Public Advocate has long held concerns about the overrepresentation of First Nations people at the FDS. In 2019-20, three of the seven clients in the FDS were of Aboriginal or Torres Strait Islander origin.<sup>23</sup>

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<sup>20</sup> Letter from Ms Clare O'Conner, Director-General, Department of Communities, Disability Services and Seniors, to Ms Mary Burgess, Public Advocate, 19 August 2020; Letter from Ms Karen Nankervis, Director of Forensic Disability, to Ms Mary Burgess, Public Advocate, 4 September 2019.

<sup>21</sup> Letter from Ms Clare O'Conner, Director-General, Department of Communities, Disability Services and Seniors, to Ms Mary Burgess, Public Advocate, 19 August 2020.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.



# Contribution to whole-of-government initiatives

## *Transition to the National Disability Insurance Scheme*

The Public Advocate has continued to contribute to the Queensland Government processes to make the structural and legislative changes required to implement the NDIS, while ensuring the provision of appropriate safeguards for people not eligible for supports under the NDIS who were previously receiving State-funded supports.

In 2019-20, the Public Advocate continued to participate on the DJAG NDIS Transition Working Group, which provided whole-of-department oversight in relation to the NDIS transition.

## *All Abilities Queensland*

*All Abilities Queensland: Opportunities for All*, is the Queensland Government's Disability Plan for 2017-20. It represents the Queensland Government's commitment to uphold the National Disability Strategy 2010-20 and build an inclusive community that supports all Queenslanders to fulfil their potential as equal citizens.

Under the *Disability Services Act*, each Queensland Government department is required to develop a Disability Service Plan. The disability service plans outline departmental actions to progress the five priorities of the *All Abilities Queensland* state disability plan. In 2019-20, the Public Advocate continued to contribute to the following actions in the DJAG Disability Service Plan:

- Maintaining a strong voice for Queenslanders with impaired decision-making capacity;
- Placing a focus on issues regarding elder abuse across all cultures and communities including law reform; and
- Develop strategic relationships with private and public stakeholders to protect the rights of vulnerable citizens, particularly those in regional and remote areas.

# Older people

## COVID-19 pandemic

The onset of the COVID-19 pandemic saw the advocacy of the Public Advocate extend to responding to the impacts of the health, legislative, policy and service responses to the pandemic on the rights and interests of older people with impaired decision-making capacity. In particular, the Public Advocate worked to ensure that measures taken to prevent the spread of the COVID-19 virus, including limiting the movement of older people and aged care residents and their ability to receive visits from their family members, were appropriately balanced against risk of transmission and people's human rights.

Similarly to the impacts for people with disability, the lives of older Queenslanders, and particularly those living in residential aged care or other forms of congregate living, changed dramatically during the pandemic. The nation-wide, and later, suburban lock downs of communities included extremely tight restrictions on residential aged care facilities, with almost all visitors excluded from some facilities and, in some instances, the confinement of older people to their rooms for weeks at a time.

Older people living in the community were required to minimise the time spent outside of their homes and to limit their contact with people, including family and friends. As a result, many older people spent months with very limited contact with family, friends and the broader community.

The risk of elder abuse increases in these environments. On 15 June 2020, World Elder Abuse Awareness Day, the Public Advocate released a media statement highlighting the elevated risk of elder abuse during the pandemic and asking the community to be alert to the signs of elder abuse occurring in people's homes and residential aged care settings.



The Public Advocate actively participated in Queensland Health's COVID-19 Aged Care Working Group to advocate for COVID-19 responses that carefully balanced the social and health needs of older people, particularly those with cognitive impairment. More information about this group can be found on pages 22 and 34.

## Royal Commission into Aged Care Quality and Safety

The Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) released its interim report 'Neglect' in December 2019. The report found that Australia's aged care system required a 'fundamental overhaul of design, objectives, regulation and funding... not merely patching up'.<sup>24</sup> It foreshadowed that the Aged Care Royal Commission's final report will recommend 'comprehensive reform and major transformation of the aged care system in Australia ... to chart a new direction for the sector, bringing a clear sense of purpose and of quality, and a renewed focus on compassion and kindness'.<sup>25</sup>

The Public Advocate welcomed the Aged Care Royal Commission's recommendations that immediate government action was required to:

- address the significant over-reliance on the use of chemical restraint in residential aged care;
- stop the flow of younger people with disability entering residential aged care; and
- expediate the process of getting younger people currently residing in aged care into more suitable residential and support settings.<sup>26</sup>

The Public Advocate's 2018-19 submission to the Aged Care Royal Commission specifically advocated for action to address the above-mentioned issues.

In 2019-20, the Public Advocate continued to closely follow the activities of the Aged Care Royal Commission and will continue to do so in the coming year.

## Use of restrictive practices in residential aged care

The Public Advocate's campaign for the development of an appropriate legislative framework for the authorisation of the use of restrictive practices in residential aged care continued in 2019-20, with some significant progress achieved.

In August 2019, the Public Advocate made a submission to the Commonwealth Parliamentary Joint Committee on Human Rights in relation to the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*. The submission asked the Joint Committee to recommend the disallowance of the legislative instrument due to significant concerns around the issues of consent, restrictive practices not being required to be used as a last resort and the legislation not including measures to reduce and/or eliminate the use of restrictive practices in residential aged care settings.

The Public Advocate was also a co-signatory on a separate submission to the Parliamentary Joint Committee, alongside Public Guardians and Advocates from across Australia. Collectively, the group expressed support for the Victorian Public Advocate's letter to the Parliamentary Joint Committee which expressed concern about the Quality of Care Principles being introduced through a Ministerial instrument rather than legislation. The letter also highlighted that the Quality of Care Principles:

- appeared to ignore Australia's human rights obligations under the *Convention on the Rights of Persons with Disabilities*;
- introduced a new flawed and ambiguous substitute decision-making regime in relation to the use of physical restraints; and
- provided virtually no regulation on the use of chemical restraint.

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<sup>24</sup> Royal Commission into Aged Care Quality and Safety, *About the Interim Report*, 31 October 2019, p 1 <<https://agedcare.royalcommission.gov.au/sites/default/files/2019-12/about-the-interim-report.pdf>>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.





The Public Advocate, Public Guardian, Victorian Public Advocate, Northern Territory Public Guardian and the Acting Deputy Trustee from the Australian Capital Territory all appeared before the Parliamentary Joint Committee on 20 August 2020 to further discuss the issues raised in the submissions made to the Joint Committee.

Following significant parliamentary debate and a notice of disallowance (that was later withdrawn), an amended version of the legislation was passed by the Australian Senate on 22 November 2019. The new regulation now provided that:

- physical and chemical restraint can only to be used as a last resort; and
- State and Territory legislation applies in relation to consent for the use of restrictive practices, and for chemical restraint, prescribing practitioners are bound by appropriate professional practice codes of conduct which require them to obtain informed consent for the administration of medication.<sup>27</sup>

The amendment also required that the new regulations be reviewed and a report delivered to the Australian Parliament. In March 2020, the Public Advocate was invited to participate on the National Aged Care Restraint Advisory Group convened to provide expert advice and guidance on the review, which is being conducted by an independent consultant. More information about the Advisory Group can be found in Appendix 3.

## Serious Incident Response Scheme

In September 2019, the Public Advocate made a submission to the Australian Government Department of Health regarding the development of a Serious Incident Response Scheme for residential aged care settings. The Public Advocate supported the focus of the proposed model on governance measures that encourage continuous improvement and capacity building across the aged care sector. The Public Advocate made detailed comments about the operation of the proposed scheme, the type of incidents that require reporting and the powers of the Aged Care Quality and Safety Commission to administer the Scheme.

## Aged Care Worker Regulation Scheme

In June 2020, the Public Advocate made a submission to the Australian Government Department of Health about the development of a new Aged Care Worker Regulation Scheme. In the submission, the Public Advocate highlighted that the knowledge and skills of aged care workers can have a significant impact on the lives of people receiving care, irrespective of whether the older person lives in their own home or in residential aged care. A worker screening and registration scheme could help ensure aged care consumers receive quality care and are protected by appropriate safeguards. The scheme could also contribute to the professionalism and reputation of the aged care sector.

The Public Advocate's submission covered issues including the scope and key features of the scheme, the minimum educational qualifications and ongoing professional development requirements for aged care workers. The Public Advocate suggested that the scheme ultimately be integrated with similar schemes in other sectors e.g. the disability sector. This would establish a consistent approach to worker registration and screening, complaints, disciplinary processes and appeal across both sectors. The integration of schemes could reduce the duplication of processes and resources, lead to a more consistent approach to applying for work in the two sectors, and could support an easier transition of appropriate workers between sectors.

## Health Transparency Bill

In September 2019, the Public Advocate made a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee regarding the *Health Transparency Bill and Regulation 2019* (Qld). The submission focussed on various aspects of the Bill and draft regulations associated with residential aged care.

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<sup>27</sup> *Quality of Care Principles 2014* (Cth).



In the submission, the Public Advocate commended and supported the Queensland Government's efforts to improve the transparency, quality and safety of health services and help members of the community to make better-informed decisions in relation to their health and aged care. The proposed legislation could significantly impact people's lives, providing access to important information to help them make, what often can be, very difficult decisions, particularly in relation to selecting a residential aged care provider for themselves or a family member.

The draft legislation required Queensland Health-operated residential aged care providers to publish certain information that would assist members of the public to make decisions about selecting an aged care provider/facility for themselves or a family member. The Bill proposed that publicly available information include the daily number of staff employed by the facility to provide services to residents (a resident to staff ratio). Privately-operated residential aged care providers were only encouraged to voluntarily provide this information.

The Public Advocate recommended that the provision of this information also include the skill mix of staff employed at the facility (i.e. registered nurses, enrolled nurses, support workers etc.) and the levels of care required by residents, to enable the public to make more informed comparisons and decisions. This suggestion was not reflected in the Act that was passed.

## Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying

On 5 July 2019, the Public Advocate appeared before the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee in relation to the Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying. At the hearing, the Public Advocate discussed the issues and recommendations raised in her previous submission to the inquiry. These issues included the restriction of voluntary assisted dying to Queenslanders with impaired decision-making capacity and the exclusion of voluntary assisted dying from advance care planning documents.

## Contribution to whole-of-government initiatives

### *National Plan to respond to the abuse of older Australians*

In 2019-20, the Public Advocate's systemic advocacy actively contributed to the following actions under the National Plan to respond to the Abuse of Older Australians (Elder Abuse) 2019-2023:<sup>28</sup>

- Advocate on behalf of older persons with impaired capacity through consultation with key stakeholders; participation in various committees, reference groups, forums and conferences aimed at addressing elder abuse.
- Advocate for improved policies, service standards and care of older Australians with impaired decision-making capacity.
- Continue to monitor the legislative, policy and practice aspects of Queensland's guardianship and administration system and contribute to positive system changes.

### *Queensland: An Age-Friendly Community*

The *Queensland: An Age-Friendly Community* strategy aims to create a community where older people are valued, respected and actively engaged in their community. Age-friendly communities are more livable for everyone. In 2019-20, the Public Advocate continued to contribute to the Respect and Social Inclusion component of the *Queensland: An age-friendly community Action Plan*. Under the plan, the Public Advocate has committed to advocating for the implementation of particular Australian Law Reform Commission Elder Abuse Inquiry recommendations, and for the national regulation of the use of restrictive practices in residential aged care.

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<sup>28</sup> Council of Attorneys-General, *National Plan to respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, Attorney-General's Department, Australian Government <<https://www.ag.gov.au/RightsAndProtections/protecting-the-rights-of-older-australians/Pages/default.aspx>>.





# Health

## COVID-19 pandemic

As discussed earlier, the Public Advocate actively participated on the Queensland Health COVID-19 Disability and Aged Care Working Groups. The Public Advocate found the Working Groups to be critical to cross agency co-operation and feedback on key issues relating to people with disability and aged care residents during the public health emergency.

The regular meetings of the working groups helped identify emerging issues and enabled information sharing and the discussion of emergency health responses for the two groups. Queensland Health used the meetings to keep sector stakeholders abreast of developments and to provide feedback on the implementation of health directives. The Working Groups contributed to improved communication, acceptance and support of COVID-19 response measures and helped identify gaps in information and guidance to the community and service providers about the virus and the application of the health directives.

## Inquiry into COVID-19 health response

In June 2020, the Public Advocate made a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for the Inquiry into the Queensland Government's health response to COVID-19. In the submission, the Public Advocate commended Queensland Health for establishing the interagency Working Groups for the disability and residential aged care sectors.

The Public Advocate's submission highlighted the long-standing need to transition people with disability, particularly those with impaired decision-making capacity, who are medically ready for discharge to community living. The Public Advocate was supportive of the concerted effort by multiple government agencies during the emergency to fast-track the discharge of people with disability who had been living long-term in public health facilities. Further information about this issue, and the progress made to reduce the number of people with disability who had been living long-term in public health facilities as part of the response to the COVID-19 pandemic can be found on page 15.

Many of the people targeted by the hospital discharge program had a disability and complex health conditions, which were the principal reasons they had resided long-term in a public health facility. Prior to the COVID-19 pandemic, a key barrier to the discharge of this cohort was the challenge of putting in place an appropriate model of disability and health supports to maintain the health and wellbeing of that person in a community living setting.

The Public Advocate highlighted the State's ongoing obligation to monitor the health and provide appropriate health supports for people with disability and complex health conditions who have been transitioned out of public health facilities during the COVID-19 health emergency. While the NDIS is responsible for the provision of disability supports and some health supports directly related to a participant's disability, the Queensland Government remains responsible for the provision of mainstream health services to this cohort, who often require annual appointments with specialists to manage their conditions, as well as preventive health interventions to maintain their health.

An outline of the Public Advocate's views about the ongoing role of the public health system in maintaining the health and wellbeing of people with disability can be found on page 15.

The Public Advocate continues to encourage Queensland Health to develop a comprehensive strategy to support the healthcare of people with disability over the long-term. A more proactive approach to this issue would significantly improve the quality of life and health of this cohort and reduce demand on emergency rooms and hospital beds.



## Use of restrictive practices in health care settings

In March 2020, the Public Advocate and Public Guardian met with the Minister for Health Services and Minister for Ambulance Services to discuss the use of restrictive practices in health settings. The catalyst for this meeting was the new National Safety and Quality Health Services Standards that require hospitals to have policies and procedures dealing with restraint and seclusion, and requiring their use be minimised, and eliminated where possible.

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

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

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

The Minister committed to establishing a working group to examine the legal and policy issues involved in addressing this issue. The Public Advocate will continue to work with Queensland Health to establish an appropriate system of regulation of the use of restrictive practices in health settings.

## Health care for people with disability

The 'Disability' section of this report provides detail about the Public Advocate's systemic advocacy in relation to the accessibility and provision of health care for people with disability, particularly for people with intellectual disability and/or cognitive impairment (see page 10).

# Mental health

## Australian Government Productivity Commission Mental Health Report

In January 2020, the Public Advocate made a submission to the Australian Productivity Commission in response to the Commission's Mental Health Draft Report. In the submission, the Public Advocate expressed general support for the focus of the report and its recommendations and suggested that two additional issues be considered.

The first was the quality of inpatient services for people with acute mental illness and whether these services deliver value for money, in terms of the health outcomes of these patients, relative to their cost. The Public Advocate raised this issue in response to concerns about the treatment regimes imposed on people in acute mental health facilities, the use of restrictive practices and the frequent failure of treatment teams to adequately inform patients about their condition and treatments.

The second issue was the need for the mental health system to be more responsive to the needs of people with disability who experience mental illness. This issue is particularly important given that more than half of people with an intellectual disability also have a mental health illness. People with intellectual disability and mental illness are generally not considered in mental health or disability policy development in Australia, and they suffer the consequences of that absence of consideration. The Productivity Commission's review presented an ideal opportunity to draw these issues to the attention of government and have them addressed.



## *Mental Health Act*

In 2019-20, the Public Advocate continued to engage with Queensland Health about the operation of the *Mental Health Act* and its effectiveness in ensuring the proper care of people detained or subject to treatment under this legislation. The Public Advocate's focus was to ensure that the rights of people with impaired decision-making capacity were properly considered and protected.

## *Chief Psychiatrist*

During 2019-20, the Chief Psychiatrist's office reviewed and updated its policies and guidelines. At the time of writing this report, the Public Advocate had commenced reviewing the updated guidelines to ensure they are consistent with the legislation and properly consider the rights and interests of people with impaired decision-making capacity. The Public Advocate will continue to review the guidelines and monitor their operation and effectiveness in 2020-21.

The Public Advocate continued to meet regularly with the Chief Psychiatrist throughout the year to discuss the operation of the Queensland mental health system. Issues dealt with during these discussions included the physical condition of involuntary mental health units at hospitals, the treatment of involuntary mental health patients, the use of restrictive practices, the impact of the COVID-19 pandemic on the operations of involuntary mental health units and other issues. This regular engagement continued a positive dialogue between the Public Advocate and the Chief Psychiatrist.

## *Mental Health Review Tribunal*

### *COVID-19 pandemic*

As with all other Queensland Courts and Tribunals, the MHRT was required to adapt its hearing processes during the COVID-19 public health emergency to comply with public health directions and social distancing. This response included the conduct of 'remote hearings'. The Public Advocate welcomed the MHRT President's reassurance that all patients were being provided with the opportunity to participate in hearings since the commencement of the Tribunal's remote hearings, and that the Tribunal was monitoring its operations and processes during the pandemic.

Given the serious nature of the matters heard by the MHRT, and the importance of the decisions made by the tribunal in relation to patients' rehabilitation and recovery, the continuation of tribunal hearings during the pandemic was critically important, as was the continued involvement of patients in the hearing process. The President confirmed that hearings continued via teleconference during the pandemic, with specific measures in place to facilitate the involvement of patients, legal representatives and treatment teams, as well as adjournment provisions should a patient wish to, but be unable to attend.

### *Recording of proceedings*

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

The Public Advocate welcomed the news during 2019-20, that the MHRT was conducting a trial of electronically recording proceedings.<sup>29</sup> The trial of the process is expected to occur early in the 2020-21 financial year with the view to all proceedings being recorded before the end of 2020.<sup>30</sup>

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<sup>29</sup> Letter from Ms Annette McMullan, President, Mental Health Review Tribunal to Ms Mary Burgess, Public Advocate, 31 July 2020.

<sup>30</sup> *Ibid.*



# Law and justice

## *Human Rights Act*

The *Human Rights Act* commenced in its entirety on 1 January 2020, marking an important milestone in Queensland's legal history. The Public Advocate strongly supports the objects and purpose of the Act, to protect and promote human rights, build a culture in the Queensland public sector that respects and promotes human rights and promotes a dialogue about the nature, meaning and scope of human rights.

The Public Advocate has worked closely with the Human Rights Commissioner on a number of issues affecting the rights of people with impaired decision-making capacity.

The Public Advocate also participated in the DJAG Human Rights Implementation Working Group during 2019-20. The purpose of this working group is to:

- oversee the implementation of the *Human Rights Act* within DJAG;
- facilitate the distribution of information and resources about the *Human Rights Act* across the department;
- identify and respond to the implementation support needs of DJAG business units; and
- coordinate a cohesive and consistent approach to implementation activities, including training, and capacity building and embedding the principles of the Act into 'business as usual' operations.

During 2019-20, the Public Advocate worked to align its policies and procedures with the *Human Rights Act*. Changes have also been made to staff position descriptions and recruitment procedures in line with policy changes implemented by DJAG in this area. All staff who support the Public Advocate have undertaken the "Human Rights Act 101" training provided by DJAG's Human Rights Unit. This training is now an on-boarding requirement for all new staff joining our office.

## Section 216 of the *Criminal Code*

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

In 2019-20, the Public Advocate continued to work on a paper for publication exploring the human rights issues associated with section 216. Due to the demands of other projects and staffing issues, there have been delays in progressing this paper. Nonetheless, this work remains a priority for the Public Advocate and it is anticipated that a finalised paper will be released in 2020-21.

## Penalties for assault on public officers

In May 2020, the Public Advocate responded to the Queensland Sentencing Advisory Council's *Penalties for assaults on public officers Issues Paper*. The Public Advocate's submission made the point that some people with impaired decision-making capacity can exhibit challenging behaviours when they are stressed or frightened or are experiencing pain or discomfort. This behaviour can be interpreted as aggressive or threatening. Situations can escalate when police, health and other public officers are not properly trained in responding to this cohort. This can often result in people with impaired decision-making capacity being charged with criminal offences. People with impaired decision-making capacity are over-represented in all parts of the criminal justice system.



The Public Advocate suggested that the Council consider maintaining the range of sentencing options currently available to the courts for those people with impaired decision-making capacity that exhibit challenging behaviours, rather than narrowing the range of sentencing options available or introducing mandatory sentencing for this cohort.

The Public Advocate also suggested consideration of mandatory training for front-line staff to ensure they are better equipped to deal with people with a range of disabilities and conditions and to recognise behaviours related to communication difficulties.

## Legal interventions

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

Legal interventions provide an opportunity to closely examine and test the operation of government systems and their treatment of people with impaired decision-making capacity. However, legal processes of any type require a significant commitment, financially and in terms of staff resources. This office will only become involved in a legal matter where there are significant systems and/or rights issues for consideration and usually where the interventions are part of a broader advocacy strategy promoting the particular rights or issues under consideration in the case.

### *Coroner's Court of Queensland*

In 2019-20, the only legal case in which the Public Advocate intervened was an inquest into the death of a person with impaired decision-making capacity. The Public Advocate is not able to provide further detail about this inquest or the issues raised in her submissions because the inquest had not been finalised at the time of writing this report.

## Limitation orders

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

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

When QCAT makes a limitation order, it is required to provide the Public Advocate with a copy of its reasons for making the order. In making a limitation order QCAT must balance the protection of people and information from disclosure with the fundamental principle that a legal process should be open and transparent.

In 2019-2020, the Public Advocate continued to review limitation order material received from QCAT and consider how these orders are impacting the rights of people with impaired decision-making capacity.



# Guardianship and administration

In 2019-20, the Public Advocate continued to monitor the operation of legislation, policy and practice aspects of Queensland's guardianship and administration system and contributed to system improvements through working with DJAG, the Public Guardian, the Public Trustee and QCAT.

## Enduring documents

### *National register for enduring powers of attorney*

In February 2020, the Australian Attorney-General's Department released the *Enhancing protections relating to the use of Enduring Power of Attorney Instruments-Consultation Regulation Impact Statement*. The core issue was whether a national register for enduring documents would act as a safeguard against their misuse, leading to financial elder abuse.

The Public Advocate made a submission to the Australian Attorney-General's Department raising several concerns about the adoption of a national register. These included:

- the lack of evidence to suggest that a registration process reduces the misuse of enduring documents;
- the requirement to register enduring powers of attorney creates additional hurdles for people wanting to create an enduring document, especially if there are fees involved for the registration;
- the lack of consistent laws across State and Territory jurisdictions around enduring documents may create confusion as to whether a registered document in one jurisdiction is valid in another, and the significant effort required for legislative change in each jurisdiction to create uniform laws for these documents to support a national register;
- the expectation that a registration process will confirm a registered document is valid and operative and the cost of such a validation process;
- whether all relevant information about an enduring power of attorney, such as the existence of court orders for guardianship or administration that may compete with the enduring power of attorney, would be available on the register and how that would be achieved and how obvious privacy issues would be dealt with; and
- how a national register will interact with the varying levels of registration of enduring documents required in each jurisdiction for property transactions.

The Public Advocate is of the view that there are still many unresolved issues around the operation of a national register system and whether it would effectively address the problems it was designed to remedy.

### *National guide to making an enduring power of attorney*

In October 2019, the Australian Guardianship and Administration Council (AGAC) released the *You Decide Who Decides – Make an enduring power for financial decisions* guide made in response to recommendations made by the Australian Law Reform Commission in its report, *Elder Abuse – A National Legal Response*. The guide provides guidance on the use of enduring appointments and had a focus on avoiding elder abuse.

In July 2019, the Public Advocate submitted feedback on the draft guide and made suggestions about maximising the accessibility of the guide.





## *Enduring power of attorney and advance health directive forms*

DJAG is reviewing the current Enduring Power of Attorney and Advance Health Directive forms, introducing explanatory guides and developing capacity assessment guidelines. As a member of the DJAG Guardianship Implementation Reference Group, the Public Advocate continued to contribute to this work in 2019-20. The Public Advocate advocated for the new forms and guidelines to be more user-friendly and accessible than the current forms and encouraged extensive user-testing to ensure that potential users of the new forms — members of the general public — can properly use and understand them.

## Systemic report on Public Trustee fees and charges

In 2019-20, the Public Advocate continued a project that commenced in the previous financial year examining the Public Trustee's fees and charges levied on its financial administration clients. The Public Advocate will release a systemic report in the coming months that will outline the issues and make recommendations to address them. Given the complexity and range of issues examined, considerable office resources and staff time was expended on the project in 2019-20.

The Public Advocate decided to undertake this project for a number of reasons. For some years, people under administration with the Public Trustee, their families and supporters had raised concerns with the Public Advocate about the level and types of Public Trustee fees and charges and their negative effect on the financial outcomes for their administration clients. Several people provided documents and records to the Public Advocate that allowed a limited analysis to be conducted to explore and test the validity of those concerns.

The information revealed that financial administration clients who were considered to have the ability to pay the Public Trustee's fees and charges were charged a multiplicity of fees. For some clients who have only modest assets and limited incomes, such as the Disability Support Pension, the fees and charges can consume a significant proportion of their income, requiring them to use their savings or other assets to pay the fees, resulting in a rapid depletion of their assets.

These outcomes were concerning because many people under administration with the Public Trustee and their supporters had a genuine and reasonable expectation that their assets and regular income would support their (usually modest) lifestyles well into the future. However, the fees many paid resulted in significant negative impacts on their lifestyle and potentially their wellbeing.

The cases initially reviewed by the Public Advocate raised concerns about:

- the number and various types of fees being charged by the Public Trustee;
- the transparency of the fees and charges and the way they were calculated and applied;
- the actual cost of providing the financial administration services and whether the fees were charged on a cost-recovery basis and provided value for money;
- exactly what services would be delivered for the fees paid; and
- the way the Public Trustee used the Official Solicitor in dealings with clients and the charging of Official Solicitor fees to clients.

The Public Advocate is the only independent oversight body with jurisdiction to specifically monitor and review the way the Public Trustee delivers services to its financial administration clients. The Public Advocate is uniquely positioned to explore issues beyond the strict legality or administrative fairness of individual Public Trustee decisions, practices and policies, including examining the reasonableness and fairness of the outcomes for clients in the broader context of their rights, vulnerabilities and quality of life.

As a result of these preliminary examinations, the Public Advocate examined these issues in greater detail and is preparing a systemic report. It is expected that the report will be released in late 2020.

The Public Advocate acknowledges the significant cooperation of the Public Trustee and his staff in providing very detailed information to assist with her inquiries into these matters, as well as their responsiveness to various concerns raised during the project.





# Guardianship and administration system responsiveness to complaints and investigations

In 2019-20, the Queensland Audit Office commenced an audit of the responsiveness of Queensland's guardianship system to complaints and investigations. In April 2020, the Public Advocate provided input into the focus and scope of the audit. The Public Advocate highlighted the legal frameworks that should be considered in the audit and suggested that QCAT's administrative operations be included in the scope of the audit. QCAT's administrative functions are governed by a specific complaints policy and procedures, which need to be accessible, effective and fair to people with impaired decision-making capacity and their family members, carers and supporters.

The Public Advocate also suggested that the audit examine the level of demand on the Public Guardian investigations team and whether this demand is negatively impacting response times and outcomes and how those issues might be addressed.

The Public Advocate also shared the findings from the office's 2015 *Strengthening Voice: A Scoping Paper About Complaints Management Systems for Adults with Impaired Capacity*, which examined complaints management processes for adults with impaired decision-making capacity.

At the time of writing this report, the Queensland Audit Office report had not been published.

## Financial summary

The Public Advocate is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*. Funding for the office is appropriated from the Queensland Government as part of the appropriation for DJAG, with the Director-General of the department being the accountable officer pursuant to the *Financial Accountability Act*. Detailed financial information relating to the operations of the department are reported in the annual report for DJAG.

In 2019-20, our office did not incur any consultancy or overseas travel costs.

A summary of our office expenditure in 2019-20 is presented below.

Expenditure item	Amount
Employee related expenses	\$776,933
Supplies and Services	\$113,320
Depreciation	\$1,547
<b>Total</b>	<b>\$891,800</b>



# Appendix 1: List of submissions

The following table presents a list of publicly available submissions made by the Public Advocate in 2019-20.

Date	Submitted to	Subject
July 2019	Australian Guardianship and Administration Council	You Decide Who Decides – Make an enduring power for financial decisions guide
August 2019	Parliamentary Joint Committee on Human Rights	<i>Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019</i>
September 2019	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	<i>Health Transparency Bill and Regulation 2019</i>
September 2019	Australian Department of Health	Serious Incident Response Scheme for Commonwealth funded residential aged care
September 2019	Department of Communities, Disability Services and Seniors	Queensland Strategy – Disability Advocacy
October 2019	Department of Social Services	Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape
January 2020	The Australian Productivity Commission	Mental Health Draft Report
March 2020	Australian Government Attorney-General's Department	Enhancing Protections relating to the use of Enduring Power of Attorney Instruments – Consultation Regulation Impact Statement
May 2020	Queensland Sentencing Advisory Council	Issues paper regarding penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers
June 2020	Queensland Health Reform Planning Group	The opportunity for Queensland's health system to build on the pandemic response reforms and innovations to deliver better value for patients, the workforce and partners, and the wider community
June 2020	Commonwealth Department of Health	Aged Care Working Regulation Scheme
June 2020	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	Inquiry into the Queensland Government's health response to COVID-19
June 2020	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability	Emergency planning and response issues paper



# Appendix 2: Speaking engagements, events and media

## **Public hearing for the Inquiry into Aged Care, End of Life and Palliative Care and Voluntary Assisted Dying** (Invited speaker)

Queensland Parliamentary Service  
Brisbane  
7 July 2019

## **Aged Care and Elder Law Conference**

Thomson Reuters  
Brisbane  
18 July 2019

## **Human Rights Act Master Class**

Disability Law Queensland  
Newmarket  
19 July 2019

## **Rock the Boat – National Elder Abuse Conference 2019**

Aged and Disability Advocacy Australia and Caxton Legal Centre Incorporated  
South Bank  
22-23 July 2019

## **National Seniors Australia Breakfast 2019**

National Seniors Australia  
South Bank  
23 July 2019

## **NDIS Insights Forum Brisbane**

National Disability Insurance Agency  
Brisbane  
15 August 2019

## **Launch of the Julian's Key Health Passport Trial**

Queensland Health  
Ipswich  
16 August 2019

## **Brisbane Community Forum**

Royal Commission into Aged Care Quality and Safety  
South Bank  
19 August 2019

## **Public hearing for the Review and Inquiry into the Commonwealth Legislative Amendment of the Quality of Care Principles 2014 with the Quality of Care Amendment (Reviewing Restraints Principles) Principles 2019**

(Invited speaker)  
Commonwealth Joint Committee on Human Rights  
Sydney  
20 August 2019

## **Justice System Workshop**

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability  
Tullamarine  
2 September 2019

## **Consultation Forum: Alternative models for allocating residential aged care places**

Australian Government Department of Health  
Brisbane  
4 September 2019



**Decision Making Support** (Webinar)  
Living with Disability Research Centre, LaTrobe University  
11 September 2019

**Wide Angle Film Festival**  
Queensland Government Multi-Agency Event  
Brisbane  
18 September 2019

**Disability Advocacy Student Workshop** (Invited speaker)  
School of Nursing, Midwifery and Social Work, University of Queensland  
St Lucia  
23 September 2019

**Better Communication Webinar: Using Easy Read** (Webinar)  
Australasian Society for Intellectual Disability  
25 September 2019

**Free and Equal: An Australian Conversation on Human Rights 2019**  
Australian Human Rights Commission  
Sydney  
8 October 2019

**Health Transparency Bill and Regulation 2019 Public Hearing** (Invited Speaker)  
Queensland Parliamentary Service  
Brisbane  
9 October 2019

**Love, Sex and Family: A Human Rights Forum**  
Queensland Advocacy Incorporated  
South Brisbane  
10 October 2019

**Forum on Royal Commission on Violence, Abuse, Neglect and Exploitation of People with Disability**  
Australasian Society for Intellectual Disability  
Woolloowin  
30 October 2019

**Altering States Evidence and Effect Conference** (Invited speaker)  
Queensland Alliance for Mental Health  
Cairns  
7-8 November 2019

**Leading Reform Summit 2019** (Panel member)  
Queensland Mental Health Commission  
South Bank  
21-22 November 2019

**Hospital Discharge Planning Forum**  
Young Care, Summer Foundation and Queensland Government  
Woolloongabba  
28 November 2019

**Palliative Care in Queensland Annual Summit**  
Palliative Care Queensland  
South Bank  
2 December 2019

**Mental Health Inquiry – Draft Mental Health Strategy**  
Australian Productivity Commission  
Brisbane  
3 December 2019



**Disability Royal Commission Legal Service Information Session**

Disability Royal Commission Legal Service  
Brisbane  
30 January 2020

**The Royal Commission – Fractured System** (Television media)

Nas Campanella, Australian Broadcasting Corporation  
ABC 7pm News (Queensland edition)  
18 February 2020

**Disability Support Workers Conference** (Invited speaker)

Multicap  
South Bank  
18-19 February 2020

**National EPOA Register discussion**

Commonwealth Attorney-General's Department  
Canberra  
25 February 2020

**Office of Advance Care Planning Forum** (Invited speaker)

Queensland Health  
Brisbane  
20 March 2020

**Living with Disability Research Seminar** (Webinar)

Living with Disability Research Centre, LaTrobe University  
13 May 2020

**Justice in Focus Series: Human Rights, Protections, Freedom and COVID-19** (Webinar)

Caxton Legal Centre Incorporated and Queensland University of Technology Law  
26 May 2020

**Human Rights Webinar** (Webinar)

Queensland Human Rights Commission  
27 May 2020

**Update: Industry Code for visiting residential aged care homes** (Webinar)

Older Persons Advocacy Network  
27 May 2020

**Healing our communities by ending elder abuse** (Webinar)

Community Legal Centres Australia and Community Legal Centres Queensland  
15 June 2020

**World Elder Abuse Awareness Day** (Public Advocate media release)

Public Advocate  
15 June 2020

**Ageing Parent carers and future planning** (Webinar)

Australasian Society for Intellectual Disability  
24 June 2020

**Halwyn 2019-2020 Reflections and taking forward the learnings, innovations and ways of working together into the future** (Online forum)

Queenslanders with Disability Network  
29 June 2020



# Appendix 3: Working and advisory groups

## Aged Care Restraint Advisory Group

Since March 2020, the Public Advocate has participated in the Commonwealth Department of Health's Aged Care Restraint Advisory Group for the Review of Restraint Principles. The Advisory Group provides expert advice and guidance on the review and is comprised of representatives from consumer and provider peak bodies, aged care providers, experts in dementia and representatives of the Australian Guardianship and Administration Council.

## Australian Guardianship and Administration Council

AGAC is the national forum of Public Advocates, Public Guardians, Guardianship Boards and Tribunals, and Public Trustees or their equivalents across Australia. AGAC's biannual meetings focus on matters of mutual concern or national significance. The Queensland AGAC members hosted the AGAC meetings in Brisbane on 11-13 March 2020.

## Queensland Guardianship and Administration Council

The Public Advocate coordinates the quarterly meetings of the Council, which provide an important opportunity for the Queensland AGAC members to come together informally to discuss current and emerging issues relating to the guardianship and administration system. The Queensland Guardianship and Administration Council is comprised of the Senior Member of QCAT's Human Rights Division, Public Guardian, Public Trustee and Public Advocate.

## Queensland Health COVID-19 Disability and Aged Care Working Groups

The Public Advocate is a member of two COVID-19 Working Groups convened by Queensland Health. One group focuses on ensuring the government's COVID actions are responsive to people with disability and the other group is focussed on best responses for people in residential aged care. These working groups provide expert sector advice to Queensland Health in relation to key actions and solutions to respond to COVID-19 within the disability and residential aged care sectors.

## Halwyn Centre Multi-Agency Working group

The Public Advocate played an active role on the Halwyn Centre Multi-Agency Working Group in 2019-20. This group is chaired by the Metro North HHS and is responsible for identifying and progressing opportunities that focus on improving the quality of life of Halwyn Centre residents and respite clients. The Public Advocate's other activities in support of the Halwyn Centre and its residents are reported in the Disability section of this report (see page 16).

## Mental Health Service Planning Working Group

The Mental Health Service Planning Working Group is convened by Legal Aid Queensland. The purpose of the group is to promote cooperation and collaboration between legal and non-legal service providers, including social, community and health services working with people with mental health issues, intellectual disability or cognitive impairment. Participating in this group enhances the Public Advocate's knowledge and understanding of the needs of this cohort, and the current and emerging systemic issues impacting this vulnerable cohort.





## Metro South Hospital and Health Service Disability Action Committee

The Public Advocate continues to be a member of this committee, which aims to improve the hospital and health services provided to people with disability. The group also oversees the Metro South Health Disability Plan. Participation on this committee is another means by which the Public Advocate can continue to advocate for the implementation of the recommendations from the *Upholding the Right to Life and Health* report.

## Elder Abuse Prevention Unit Reference Group

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

## Seniors Interest Group

The Public Advocate attends the quarterly Seniors Interest Group meetings, which are facilitated by the Council on the Ageing (Queensland). The meetings include discussions about emerging and current issues relating to older Queenslanders. In 2019-20 these issues included the Royal Commission into Aged Care Quality and Safety, Queensland's transition to the NDIS, the COVID-19 pandemic, the Seniors Enquiry Line and the Inquiry into Aged Care, End of Life, Palliative Care and Voluntary Assisted Dying.

## Public Trustee reference groups

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

## Queensland: An Age-Friendly Community Senior Officers Group

The Queensland Age-Friendly Community Strategy Senior Officers Group is convened by the Office for Seniors within DCDSS. The group was developed for members to discuss, develop and advance the delivery of the age-friendly community strategy in Queensland. The Public Advocate participated in meetings and continued to contribute to the Queensland: An age-friendly community action plan in 2019-20.

## Queensland Law Society Committees

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



## DJAG NDIS Transition Working Group

In 2019-20, the Public Advocate continued as a member of the DJAG NDIS Transition Working Group, which provides whole-of-department oversight of the Queensland transition to the NDIS. The Working Group is led by Strategic Policy and Legal Services. All represented agencies and/or business units submit progress reports on issues associated with the roll out of the NDIS in Queensland. The DJAG reports are combined with those from other Queensland Government departments to inform the decision-making of the NDIS Reform Leaders Group.

## DJAG Guardianship Implementation Reference Group

DJAG is reviewing Queensland's Enduring Power of Attorney and Advance Health Directive forms, including the introduction of explanatory guides and capacity assessment guidelines. The Public Advocate is a member of the DJAG Guardianship Implementation Reference Group which provides advice and support for the review of the forms.

## DJAG Human Rights Implementation Working Group

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

## Public Interest Disclosures Agency Network

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



# Appendix 4: Glossary of acronyms

<b>AGAC</b>	Australian Guardianship and Administration Council
<b>CHAP</b>	Comprehensive Health Assessment Program
<b>DCDSS</b>	Department of Communities, Disability Services and Seniors
<b>DJAG</b>	Department of Justice and Attorney-General
<b>FDS</b>	Forensic Disability Service
<b>HHS</b>	Hospital and Health Service
<b>MHRT</b>	Mental Health Review Tribunal
<b>NDIS</b>	National Disability Insurance Scheme
<b>NDIS Q&amp;S Commission</b>	NDIS Quality and Safeguards Commission
<b>QCAT</b>	Queensland Civil and Administrative Tribunal



# Appendix 5: Annual report compliance checklist

The Queensland Government requires that all agencies include a compliance checklist as part of their Annual Report. The following checklist presents references to where each disclosure requirement has been addressed in this report.

The *Annual report requirements for Queensland Government agencies* is represented as 'ARR' in the compliance checklist.

Summary of requirement		Basis for requirement	Annual report reference
Letter of compliance	Letter from accountable officer to the Minister	ARR 7	ii
Accessibility	Table of contents	ARR 9.1	vii
	Glossary of acronyms	ARR 9.1	37
	Public availability	ARR 9.2	i
	Interpreter service statement	<i>Queensland Government Languages Services Policy</i> ARR 9.3	i
	Copyright notice	<i>Copyright Act 1968</i> ARR 9.4	i
	Information licencing	<i>QGEA- Information Licensing</i> ARR 9.5	i
General information	Introductory information	ARR 10.1	iii
	Agency role and main functions	ARR 10.2	1
	Operating environment	ARR 10.3	2
Non-financial performance	Whole-of-government plans	ARR 11.2	18, 21, 25
	Agency objectives	ARR 11.3	5-6
Financial performance	Financial summary	ARR 12.1	29
Governance – management and structure	Organisational structure	ARR 13.1	4
	<i>Public Sector Ethics Act 1994</i>	<i>Public Sector Ethics Act 1994</i> ARR 13.4	4
	Queensland Public Service Values	ARR 13.6	4
Governance – risk management and accountability	Risk management	ARR 14.1	7-8
	Internal audit	ARR 14.3	8
	External scrutiny	ARR 14.4	8
	Information systems and record keeping	ARR 14.5	8
Governance – Human Resources	Strategic workforce planning and performance	ARR 15.1	5
Open data	Consultancies	ARR 33.1	29
	Overseas travel	ARR 33.2	29



