

# Office of the Public Advocate



## Annual Report 2018-2019

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To:

The Hon. Vickie Chapman MP

Attorney-General

This annual report is presented to Parliament to meet the statutory reporting requirements of the *Guardianship and Administration Act 1993* and to meet the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

It is with great pleasure that I present this report, which provides an account of the work of the Office of the Public Advocate (**OPA**) during 2018-19. There were many highlights and achievements for the OPA during the year, including the development of a strategic plan and the successful transition of many of OPA's eligible clients to become participants in the National Disability Insurance Scheme (**NDIS**). The work of the Disability Advocate, Dr David Caudrey, has been of significant value to South Australians who are engaging with the NDIS, particularly in terms of advocating for improved participant experiences and a reduction of red tape in the NDIS.

I thank the OPA staff for their ongoing commitment and support during the year in working with South Australians who require assistance with decision making and in implementing business improvements in our practices.

Submitted on behalf of the Office of the Public Advocate by:

Anne Gale

Public Advocate



30-09-2019

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Signature

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Date

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# Introduction

## Public Advocate's Message

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The past year has seen a significant focus on the National Disability Insurance Scheme (NDIS) whilst the Office of the Public Advocate (OPA) staff continue to also pursue the core responsibilities of decision making, dispute resolution and education and information provision.

In April 2019, the Attorney-General announced a proposal to merge the OPA with the Public Trustee. Consultation between the Attorney-General's Department with the OPA, Public Trustee staff, and external stakeholders has begun.

The OPA saw an increase in the numbers of guardianship appointments during 2018-19 and a decrease in the numbers of guardianship matters that were closed. This reflects a number of contemporary issues, including: the role of the OPA in making decisions about guardianship clients' NDIS services; and the impact of the decision of the Supreme Court of South Australia in December 2018 in relation to the detention of people in facilities and the subsequent decision of the Full Court in May 2019.

Some key activities and changes for the OPA in 2018-19 were as follows:

- Dr David Caudrey was appointed Disability Advocate for South Australia for a one-year term in November 2018. Dr Caudrey joined the OPA in this role in January 2019. Dr Caudrey has been meeting with families about their experience of the NDIS and advocating about key issues for South Australians with disability.
- In April 2019, the OPA moved from our location in at the ABC Building in Collinswood to new premises at 95 Grenfell Street in Adelaide city centre.
- Regional visits were undertaken during 2018-19, visiting key organisations and stakeholders that OPA works in partnership with, and co-presenting a number of sessions about restrictive practices with the NDIS Quality and Safeguards Commission.
- The OPA built on business improvements made during 2017-18, made further improvements to a number of internal policies and procedures, and developed a Strategic Plan with key performance indicators.

The OPA continued its research and policy work on supported decision-making for people with impaired decision-making capacity. This included delivering a project funded by the Law Foundation of South Australia on opportunities for law reform and policy development and one with and funded by the Lifetime Support Authority.

## Highlights and Achievements

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The OPA's provision of services to the South Australian community has increased this year. Across 2018/19, OPA has:

- assisted **1323** guardianship clients
- worked with **369** new guardianship clients
- closed **267** guardianship files
- received **67** new dispute resolution applications and
- responded to enquiries to our information service.

These figures reflect increased activity with individuals, family members, community members and organisations in the past year, especially in respect of the OPA's decision-making functions as guardian. More information on each area of our work, including comparison with 2017-18, can be seen throughout the report.

## Areas of Reform

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### Reform in Disability

The NDIS in South Australia was expected to be at full scheme by 30 June 2018 for people living with a disability. From 1 July 2018 people with psycho-social disability were expected to enter the scheme. Acceptance into the scheme has been slower than expected and the OPA continues to work with the National Disability Insurance Agency (**NDIA**) to develop plans for eligible participants.

The Public Advocate has worked constructively with the South Australian government Department of Human Services (**DHS**) and the Department for Health and Wellbeing (**DHW**) to undertake NDIS eligibility determination and participant planning. This aims at ensuring OPA's clients (as participants) are able to access the scheme and get the best plan possible for their future.

### Reform in Aged Care

The Royal Commission into Aged Care Quality and Safety commenced hearing evidence in February 2019. The Royal Commission is charged with inquiring into the quality and safety of aged care services and how best to provide high quality services to Australians. The Royal Commission is due to provide an interim report by 31 October 2019, and their final report by 12 November 2020. In 2018-19 the OPA provided information to the Royal Commission about key issues for people under guardianship who are receiving aged care services in South Australia.

### Elder Abuse

The issue of elder abuse has continued to grow in profile over the past year with increasing action at both the Commonwealth and state levels. The Adult Safeguarding Unit with the DHW begins formal operation in October 2019. The OPA welcomes this initiative as an

additional safeguard for vulnerable older people. During 2018-19 the OPA has engaged with the DHW and made submissions in respect of the legislation and regulations, establishing the Adult Safeguarding Unit and its operation.

At the national level, the Australian Government committed to progressing a number of recommendations of the Australian Law Reform Commission (**ALRC**) Inquiry into Elder Abuse, including the development of a national plan. The OPA has contributed to this process as a member of the Australian Guardianship and Administration Council Project Governance Group overseeing the development of National Guidelines for Australian Tribunals and the development of a national resource on enduring powers documents

## Mental Health

A review of mental health inpatient rehabilitation services located at Glenside campus was completed in April 2019. The Public Advocate became a member of the Intensive Monitoring and Inpatient Rehabilitation Services Report Recommendation Governance Steering Committee, which oversees the Central Adelaide Local Health Network (a directorate of the DHW) response to the recommendations for improvement (that came from the review). The Public Advocate has continued membership of the NDIS Psychosocial Taskforce to ensure the orderly transition of eligible mental health patients to participate in the NDIS.

## Supported Decision-Making

The OPA has progressed its work into research and recommendations for practical implementation of supported decision-making through two projects during 2018-19, partnering with the Lifetime Support Authority and the Law Foundation respectively. The OPA also established the Supported Decision-Making Interest Group as a forum for relevant stakeholders to share ideas and experience implementing supported decision-making.

## Australian Guardianship and Administration Council (AGAC)

The Public Advocate is a member of the Australian Guardianship and Administration Council (**AGAC**). AGAC is an inter-jurisdictional group comprised of the Public Guardians, Public Advocates, the heads of Boards and Tribunals (with jurisdiction to make guardianship and administration orders), and the State Trustees or Public Trustees.

AGAC generally meets twice per year. The Public Advocate and two staff members attended the bi-annual AGAC Conference in August 2018. Key topics discussed included guardianship, adult safeguarding, 'My Health' Record, the NDIS, the NDIS Quality and Safeguarding Commission and restrictive practices. AGAC's National Conference was held on 14 and 15 March 2019. The Public Advocate presented a session about the role of mediation and supported decision-making in preventing elder abuse. The Public Advocate attended an AGAC teleconference on 3 April 2019. Key topics discussed included national initiatives on elder abuse, and the Royal Commission into Aged Care Quality and Safety.

# Functions of the Office of the Public Advocate

## Purpose and Role

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*The Guardianship and Administration Act 1993* establishes the Public Advocate to provide services to promote and protect the rights of people with a mental incapacity.

*The Advance Care Directives Act 2013* and *Consent to Medical Treatment and Palliative Care Act 1995* authorise the Public Advocate to assist with dispute resolution in relation to advance care directives and consent to medical treatment.

The OPA provides advocacy, guardianship, information, investigation, education and dispute resolution services to fulfil statutory responsibilities of the Public Advocate.

## Objectives

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To review programs for mentally incapacitated persons and to make recommendations to the appropriate minister about unmet need or inappropriately met need.

To promote the rights and interests of persons with a mental incapacity through systemic and individual advocacy.

To provide information and advice to the community related to mental health, guardianship and administration, advance care directives, legislation and related issues.

To act as guardian of last resort, and undertake investigations as required by the South Australian Civil and Administrative Tribunal (**SACAT**).

To provide effective dispute resolution in relation to disagreements around advance care directives and consent to treatment decisions.

## Key Services

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The OPA works with and on behalf of adults and has three main client groups:

- people with mental incapacity/impaired decision making capacity
- family, carers and friends of people with mental incapacity/impaired decision making capacity and
- people and organisations with an interest in issues arising from mental incapacity/impaired decision making capacity.



### Decision-Making

When a guardian needs to be appointed for a person with impaired decision making capacity, to make lifestyle, accommodation and/or health decisions and there is no other appropriate person to be appointed, SACAT may appoint the Public Advocate as guardian of last resort.

### Investigating

The SACAT can direct the Public Advocate to investigate the circumstances of a person who is considered to have an incapacity and to be at risk of some form of harm. The OPA provides a report to assist the SACAT to make a decision.

### Resolving and Mediating

The Public Advocate is authorised to mediate certain types of disputes under the *Advance Care Directives Act 2013*, and the *Consent to Medical Treatment and Palliative Care Act 1995*.

### Informing and Educating

The OPA provides information and education about the law and issues that are, or could be, affecting a person with impaired decision-making capacity.

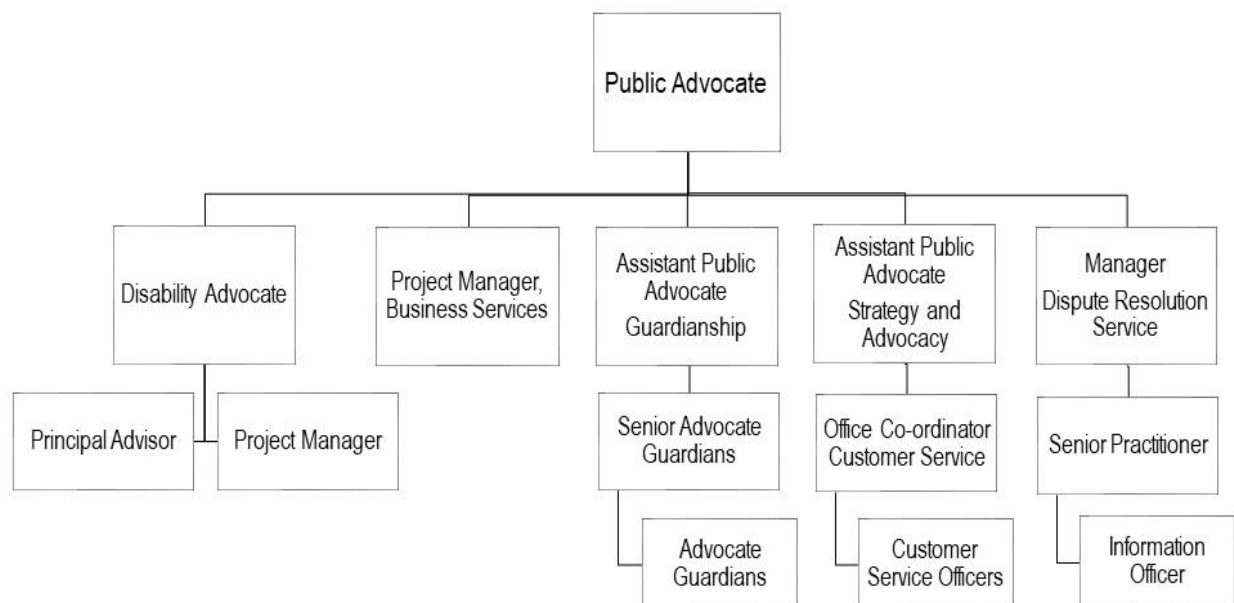
### Advocating and Promoting Rights

The OPA undertakes individual advocacy for its clients and some other individuals and systemic advocacy. The Public Advocate can make recommendations to Ministers for legislative and/or operational change.

### Innovating

The OPA undertakes research and business improvement projects to enhance delivery of key services.

## Organisational Chart





# Decision Making



## The Role of the Public Advocate in Guardianship

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A guardianship order is an order made by the SACAT that appoints a guardian to make decisions on behalf of a person with mental incapacity when they are unable to make their own decisions, and where no other person can act on their behalf. SACAT can appoint the Public Advocate as guardian of last resort. The OPA's guardianship service is provided in accordance with the *Guardianship and Administration Act 1993*.

## Profile of Clients under Guardianship

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Guardianship services are provided in two ways by the OPA. Guardianship clients are either delegated an individual guardian, or managed via a 'team response'. At 30 June 2019, there were 1056 clients under guardianship.

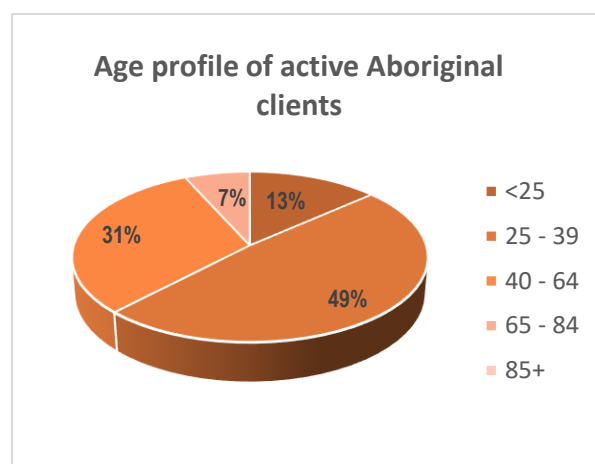
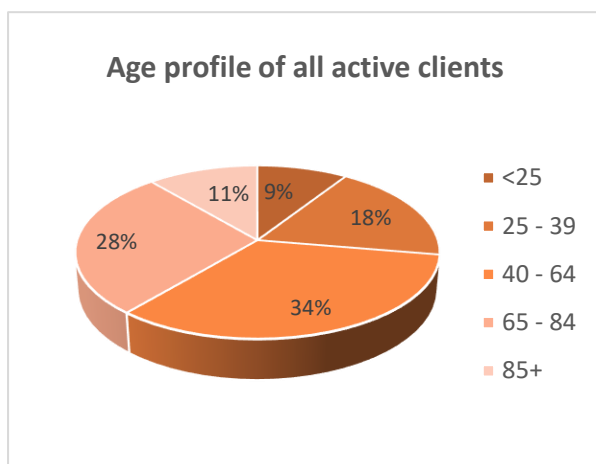
Clients under guardianship reflect the diversity of the community. However, Aboriginal clients under guardianship accounted for 7.6 percent of all clients at 30 June 2019 which is the same for previous years. Aboriginal people under guardianship are over-represented compared to their proportion of the South Australian population (2 percent).

In 2018-19, 56 percent of guardianship clients were male and 44 percent were female. For Aboriginal clients there was a higher proportion of male clients (66 percent).

The age profile of guardianship clients indicates that a third (34 percent) of all clients are in the middle age group of 40 to 64 years. The age profile of Aboriginal clients shows a higher representation of younger clients aged between 25 and 39 years (49 percent). There was a much lower representation of Aboriginal clients in the older age groups, and no Aboriginal clients aged 85 years and over in 2018-19 reflecting the lower life expectancy of Aboriginal people.

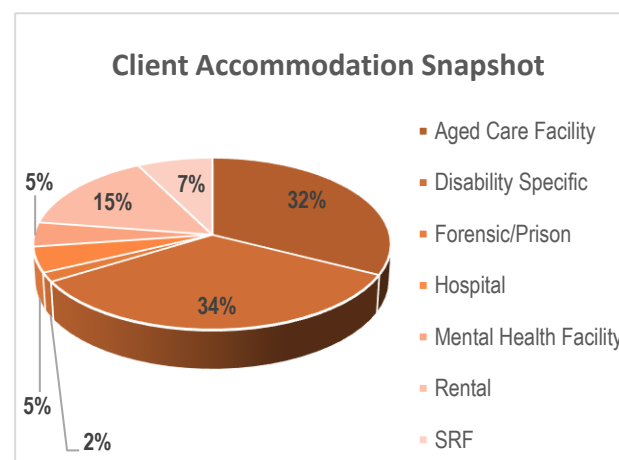
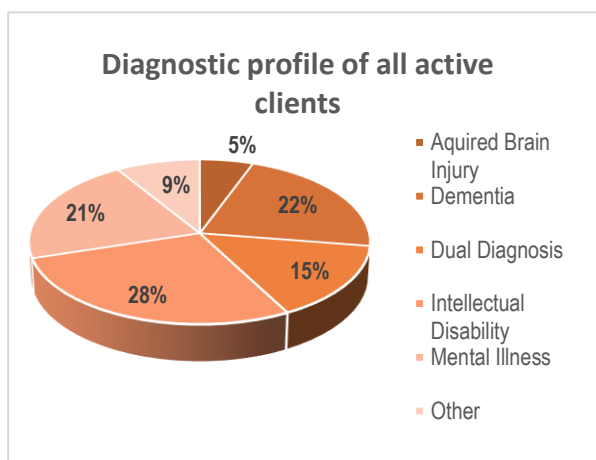
### Client Diagnostic Profile

In 2018-19, the impairments of people under guardianship arose from the following main conditions; intellectual disability (28 percent), mental illness (21 percent) and dementia (22 percent). This is similar for Aboriginal clients but dual diagnosis was more prevalent than dementia for Aboriginal people under guardianship.



### Accommodation

The majority of clients under guardianship reside in either disability specific accommodation (34 percent) or an aged care facility (32 percent). An additional 15 percent of guardianship clients reside in public, private and community rental accommodation, and 7 percent in a supported residential facility. A small group of clients are accommodated at a forensic service or prison, in hospital or a mental health facility.



Further information about Guardianship can be found on the OPA website:

[http://www.opa.sa.gov.au/resources/information\\_sheets\\_\(Information\\_Sheet\\_No\\_4\).](http://www.opa.sa.gov.au/resources/information_sheets_(Information_Sheet_No_4).)

Five year data <https://data.sa.gov.au/data/dataset/office-of-the-public-advocate.>

## Guardianship Activity in 2018-19

### Active matters

At 30 June 2019 the OPA had 1,056 active guardianship matters which was an additional 100 active matters compared to the previous year. There was also an increase in total guardianship matters in 2018-19. Over the past five years, an average of 1,265 South Australians have received guardianship services each year from the OPA.

Guardianship	2017-18	2018-19	% ↑/↓
Active matters for the whole year	1267	1323	4.4 ↑
Active matters at 30 June 2019	954	1056	10.7↑

Table 1: Active guardianship matters 2018-19

### New appointments

The OPA attends initial SACAT hearings (screenings) of guardianship applications where the Public Advocate has been nominated as potential guardian on the application. In 2018-19 there were 515 applications for potential guardianship and the OPA was appointed as guardian for 369 South Australians with impaired decision-making capacity (71 percent). The majority of new guardianship clients were clients aged 65 and over (64.2 percent), reflecting South Australia's ageing population. Another 28.7 percent of clients were aged between 40 and 64 years old. There was an increase in both guardianship applications and new guardianship appointments in 2018-19, as per the information in Table 2.

Guardianship	2017-18	2018-19	% ↑/↓
SACAT hearings for guardianship applications	418	515	23.2 ↑
New guardianship matters	325	369	13.5 ↑
Closed guardianship matters	314	267	15.0 ↓

Table 2: New guardianship matters 2018-19

### Closed matters

In 2018-19, 267 guardianship matters were closed which represents 20.1 percent of all guardianship matters for the year (see Table 2). Over the past five years the closure rate of guardianship matters has been between 20 and 28 percent of all matters. Of the 267 closed guardianship matters, 102 matters (38 percent) were in place for over three years. Guardianship matters were closed because the orders were revoked (61 percent), closed after the death of the client (35 percent) or the appointment of a private guardian (4 percent). Revocations are sought by the OPA where it is believed that there is no longer a role for an OPA guardian.

Length of guardianship matter	Number of closed matters
6-<12 months	24
1yr-<2 years	93
2-<3 years	48
3+ years	102
<b>Total</b>	<b>267</b>

Table 3: Length of guardianship matters 2018-19

## Decisions

The role of the Public Advocate is to make decisions for people with impaired decision-making who are unable to make decisions for themselves. These decisions include accommodation, healthcare and lifestyle decisions including access to services and who can see the person.

In 2018-19 the breakdown of decisions made for clients under guardianship was

- Accommodation (32 percent)
- Healthcare (22 percent)
- Lifestyle (25 percent)
- Services, Support & Access (19 percent)
- Electro-Convulsive Therapy (1 percent).

There was an increase in lifestyle decisions in 2018-19, which could reflect the decisions required to assist OPA clients to successfully transition to the NDIS. Decisions on access (11 percent), service/support (7.5 percent) and ECT (1 percent) were also made during the year.

Special Powers are additional orders made by the SACAT under section 32 of the Guardianship and Administration Act.

In 2018-19 the OPA lodged 65 applications with the Tribunal regarding s32 special powers. 43 applications requested detention powers, 36 applications were concerned with residential powers and 32 applications concerned medical treatment and care. A third of applications were for two or more special powers.

Special powers include:

1. a direction for a person to reside in a particular place or with a particular person
2. authorisation for a person to be detained at the place they have been directed to stay
3. authority that a person receives proper medical treatment and care and
4. After hours emergency response.

## Urgent Decision Making

The OPA provides an after-hours telephone service on weekdays, and 24 hours on weekends and public holidays. The service provides for urgent decision for clients and

service providers, including matters that may require an application to SACAT for urgent orders. In 2018-19, the OPA responded to 948 after-hours calls with a monthly average of 79 calls.

The two peak periods are generally 12:00pm to 6:00pm (weekends and public holidays), and 6:00pm to 9:00pm. An analysis of 72 calls responded to in October 2018 highlighted that over one-third (37 percent) of calls related to information provision followed by potential or actual urgent SACAT hearings for interim guardianship orders (22 percent) and requests for medical consent (16 percent). The majority of callers to the after-hours service were medical staff followed by service providers.

### Investigations

The Public Advocate can be directed by SACAT to conduct an investigation and provide a written report relevant to an application received by SACAT. The aim of the investigation report is to provide a balanced, concise overview of the circumstances of the person associated with the application. Investigation reports are presented at SACAT hearings and considered along with other evidence.

OPA staff are responsible for investigations which involve interviewing the person who is the subject of the investigation, as well as meeting and having phone contact with other interested parties. The types of issues the OPA investigate include the appropriateness of sterilisation, accommodation matters, access issues, health issues, financial matters and the appropriateness of individuals to act as private guardians.

Complaints/Information Requests	2017-18	2018-19
OPA investigations undertaken for SACAT	26	35
OPA investigations finalised for SACAT	20	31

Table 4: Investigations for SACAT in 2018-19

### Individual Advocacy

The OPA provided individual advocacy for clients under guardianship as well as a number of individuals who did not have an appointed guardian.

OPA advocated on:

- appropriately resourced accommodation
- choice and flexibility in relation to support
- access to a range of services including allied health, healthcare and mental health
- appropriate services for guardianship clients who are in prison
- access to appropriate services in rural and remote areas.

Advocacy	2017-18	2018-19
Individual Advocacy Clients	19	13

Table 5: Advocacy matters 2018-19

### Litigation Guardianship

In civil legal matters, if a solicitor is not able to gain consistent instructions from their client due to a mental incapacity/impaired decision-making capacity, the Court can appoint a Litigation Guardian to assist the person to instruct a lawyer. In assessing capacity for litigation guardianship, the OPA recommends that solicitors refer to the Law Society of South Australia's *Client Capacity Guidelines* 2017.

When appointed by the Court the Litigation Guardian's role is to support the client to articulate their instructions. Where this is not possible, a Litigation Guardian may be required to provide substitute instructions on the person's behalf. The OPA opened four new litigation files during 2018-19.

Litigation Guardianship	2017-18	2018-19
Appointments	7	4

Table 6: Litigation guardianship 2018-19

### Complaints and Decision Reviews

Complaints may relate to decisions made by OPA staff, communication concerns, or other matters. In 2018-19, the OPA responded to 19 complaints/decision reviews, 22 ministerial matters (for a briefing) and eight Freedom of Information requests. The increased number of complaints and decision reviews reflects increased awareness of rights.

Complaints/Information Requests	2017-18	2018-19
Complaints and Decision Reviews	7	19
Ministerial requests for briefing	6	22
Freedom of Information (FOI) Requests	8	8

Table 7: Information requested 2018-19

### Warrants

A warrant is a written authority to apprehend a person under section 69 of the *Guardianship and Administration Act 1993* to take them to a psychiatrist, psychologist or medical practitioner nominated by SACAT for examination and assessment. There were no applications for a warrant made in 2018-19.

# Resolving and Mediating



## Dispute Resolution Service (DRS)

The OPA Dispute Resolution Service (**DRS**) is authorised to resolve disputes under the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*. To fulfil its responsibilities in accordance with the legislation, the OPA operates the DRS and employs qualified mediators who have experience in working with vulnerable people and complex conflict situations.

It is the intention of both Acts that applications for dispute resolution should be resolved by the DRS, and only proceed to the more formal SACAT process if resolution cannot be achieved. For example, if during a dispute resolution process the OPA becomes aware of abuse or harm to the person, or if the matter is not within the legislative authority of the DRS, the mediation process is halted and the matter is referred to SACAT.

The DRS celebrated five years of operation on 30 June 2019. Section 62 of the *Advance Care Directives Act 2013* states that a review into the operation of the Act must be conducted within five years with a report to be submitted to both Houses of Parliament. The OPA contributed to this review through the consultation process and provided a written submission.

Since the *Advance Care Directives Act 2013* came into operation in July 2014 the DRS has had a consistent number of new applications for dispute resolution, with approximately 100 applications being received each financial year up until 2017-2018. During 2018-2019 the number of new applications decreased with 67 applications being received.

### New applications

The primary reason for the decrease in the number of new applications is that there has been a decrease in the number of referrals to the DRS from the SACAT, as per Table 8. It is understood that this may be attributable to amendments to the *Advance Care Directives Act 2013*, particularly section 51(1), which provides SACAT with broader power to revoke the appointment of a substitute decision maker without the need for an application from the Public Advocate under section 51(2).

Dispute Resolution Service (DRS)	2017-18	2018-19
DRS applications	112	68
New referrals	98	67

Table 8: New dispute resolution applications 2018-19



Financial Year	SACAT referrals to DRS
14/15	45
15/16	21
16/17	28
17/18	19
18/19	5
<b>Total</b>	<b>118</b>

Table 9: SACAT referrals to DRS 2018-19

### Closed matters

The DRS has developed a model of dispute resolution and mediation that is rights-based and person-centred enabling participants who disagree to come together in a collaborative way to discuss the issues in dispute, and develop options to resolve those issues. Of paramount importance are the rights of the person at the centre of the dispute, ensuring that their voice is heard in the resolution process, especially if they are not able to participate directly. For example, because of impaired decision-making capacity.

The table below indicates the outcome of applications received by the DRS during 2018-2019.

Status of disputes	2017-18	2018-19
Resolved	44	32
Closed	24	22
Referred to SACAT	25	8
Withdrawn	9	4
Client deceased	3	1
<b>Total</b>	<b>105</b>	<b>67</b>

Table 10: Status of DRS matters in 2018-19

When the DRS is able to mediate, the success rate is high with 32 disputes out of 33 resolved (97 percent). A successful mediation results in a Mediation Agreement, that upholds the rights of the person that the dispute is about, and can contain an agreement about future communication between the parties that assists them to resolve any future conflicts. It also prevents the potential appointment of the Public Advocate as guardian of last resort.

Analysis of all applications highlights that at least 26 applications were unable to proceed to mediation because the person had decision making capacity or the matter was out of scope. Mediation is voluntary and for 15 matters, parties were not willing to mediate or to be involved in the dispute resolution process. There were 9 other matters which were unable to proceed to mediations for reasons including that there were allegations of elder abuse and there was a question of validity about the advance care directive which required a declaration by the SACAT.

The DRS will gather more qualitative data in 2019-20 to examine the reasons why people decline this service, and strategies for encouraging parties to participate in the process.

### Dispute Resolution Service Case Study: Mr May

Mr May is a ninety year old man with a diagnosis of vascular dementia, living in an aged care facility. The application for dispute resolution was made by one of his four children, two of whom had been appointed as substitute decision makers under an Advance Care Directive. The issues in dispute were in relation to accommodation and meaningful access to Mr May by all family members.

During the mediation process it became clear that a 'falling out' between some family members had occurred on top of already strained relationships. This conflict hampered clear communication between the parties, preventing concerns to be raised and properly discussed.

All parties agreed to mediation and came together to discuss the issues at hand. Mr May was not able to take part in the mediation but was visited by the mediator prior to the mediation taking place. Unfortunately, the level of Mr May's dementia prevented communication with the mediator and the parties were advised of this.

During the mediation, the family members were assisted to raise their concerns about Mr May and to discuss their options and views. The mediator focused the participants on what Mr May would have wanted and to any directions that he made in his advance care directive.

The mediation ended with the family members making an agreement which enabled Mr May's appointed substitute decision makers to remain in place and avoid the matter proceeding to SACAT. The family members agreed that Mr May should remain in his current accommodation where he is settled, well cared for and appears to be happy. The family agreed on a communication plan that would enable all of them to get information about Mr May's health and wellbeing. This had the added bonus of ensuring that Mr May could have meaningful visits and outings with his family and not have the burden of the conflict present in his life.

# Informing and Educating



## OPA Information Service

The provision of information and education to community members, health professionals and service providers is an important role of the OPA. Areas covered by the Information and Education Service included adult protection, the SACAT application process, information on decision-making capacity, guardianship and administration orders, and advance care directives.

In 2018-19 the OPA commenced production of three information videos covering the Role of the Public Advocate, Guardianship, and Advance Care Directives. The videos were completed and launched early in 2018-19.

Information is provided in three main ways:

1. The OPA Telephone Information Service
2. Face-to-face education sessions
3. The OPA website - <http://www.opa.sa.gov.au/>

The OPA website provides information and a range of useful resources including:

- 29 Information Sheets on the functions of OPA
- Videos: [Role of the Public Advocate](#), [Guardianship](#), and [Advance Care Directives](#)
- Frequently Asked Questions
- Application forms (e.g. for Mediation and Dispute Resolution Services)
- The Supported Decision-Making
- Discussion Papers and Submissions
- Annual Reports
- Useful links.

## Enquiries

In 2018-19 the OPA recorded 3258 enquiries to the Information Service and on a wide range of issues. The three most common enquiries concerned Administration matters (714) and Guardianship matters (644) and Advanced Care Directives (505).

Information	2017-18	2018-19
Website visitors	31277	33533
Requests for Information	3071	3258

Table 11: Information provision in 2018-19

The Information Service can be contacted by phone, letter, and email, or by visiting the Office and operates during business hours. Information and advice is provided on a diverse range of issues affecting people with impaired decision-making such as rights information, care and treatment of people, applications to SACAT for Administration and Guardianship Orders and guardianship. If appropriate, the OPA Information Officer makes referrals to other agencies. Duty guardians provide back-up advice regarding more complex matters.

### Education Sessions

The Office provides information about the Guardianship and Administration Act (SA) 1993, the Mental Health Act (SA) 2009, the Advance Care Directives Act 2013 and the Consent to Medical Treatment and Palliative Care Act (SA) 1995. In 2018-19 the requested education sessions were on the role of the Public Advocate and Planning Ahead.

Education	2017-18	2018-19
Education sessions	31	23
Attendees	629	1217

Table 12: Education provision in 2018-19

# Advocacy and Promoting Rights



## Overview

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The Public Advocate advocates about systemic issues that affect people with a mental incapacity. This involves highlighting issues that have an impact on people who need help with decision-making, such as the impact of reforms in the disability sector, mental health and aged care systems. This type of advocacy includes the Public Advocate making recommendations to the Attorney-General, to Ministers with portfolio responsibilities in health, disability, mental health, housing or aged care, and reporting on areas of unmet need and providing ideas for improvement of programs, legislation, systems and processes.

## Disability Services in 2018-19

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In 2018-19 the OPA advocated for systemic improvements in the way that guardianship clients access disability services. There was a significant focus on the NDIS, as well, the use of restrictive practices and appropriate accommodation for clients with disability.

The OPA held a six-weekly Disability Forum with key stakeholders concerning issues arising in the disability sector and provided a co-ordinated response to issues and unmet need. In 2018-19, issues included:

- the South Australian Disability Inclusion Plan
- the transition of shared Department of Human Services and OPA clients to the NDIS
- the work of the Disability Advocate
- the use of restrictive practices
- the supply of appropriate accommodation
- supported decision-making.



## National Disability Insurance Scheme (NDIS)

On the 1 July 2016 South Australian adults aged 18 to 64 became eligible to access the NDIS which involves substantial change to the provision of personal support through greater choice and control for people with disability. The OPA has a critical role in supporting guardianship clients transitioning from state funded services to the NDIS, ensuring that there is no loss of essential services and supports.

The OPA has worked with the DHS and the NDIA to identify approximately 670 guardianship clients as eligible to transition. Of these clients the OPA assisted 570 clients to meet the NDIS access requirements as at 30 June 2019. Of this cohort, OPA supported 527 clients to attain NDIS plans. The OPA is working with the remaining clients to facilitate their access, planning and transition to the NDIS.

In 2018 the OPA received additional funding in the 2019-20 State Budget to assist in the transition of OPA clients to the NDIS and to also develop data and reporting processes around these processes.

As a result, the OPA increased guardianship services and developed an NDIS project team to undertake detailed NDIS participant planning to ensure clients are able to access the scheme and get the best plan possible for their future. The project also raised systemic issues at a national level and worked with the NDIA to progress outcomes.

NDIS data and reporting processes have also been implemented which allow the Public Advocate to track a client's status during the transition. This helps to ensure that clients receive the supports they need. OPA has developed internal procedure documents to assist staff to make decisions, and to advocate, for clients accessing the NDIS in the areas of:

- Access and Planning
- Plan Reviews
- Support Coordination
- Complaint Management.

During the year the OPA continued to build links with health services and non-government organisations and service providers. The OPA participated in regular NDIS related meetings, stakeholder forums and workshops, including:

- Monthly meetings between the NDIA and the Public Advocate
- NDIS Inter-jurisdictional meetings of public guardians and justice agencies
- South Australian NDIA and OPA operational meeting
- NDIS Psychosocial Disability Transition Taskforce
- Disability Forum with DHS (SA) chaired by the Public Advocate.

The OPA raised implementation and outcomes at various forums:

Issues raised	Outcomes achieved
<ul style="list-style-type: none"> <li>▪ Recognition of the complexity of access, planning and support needs for many clients of the OPA.</li> <li>▪ The impact on the OPA regarding the role of the guardian as decision-maker and the expectation that OPA staff act as nominees.</li> <li>▪ The impact of the NDIA requirement for independent medical assessments which causes delays in planning and discharge issues for clients exiting health facilities including hospitals and forensic mental health services.</li> <li>▪ Risk of gaps in the market: that participants with high and complex needs will be unable to access a service due to thin markets.</li> <li>▪ Significant delays in unscheduled plan reviews causing risk to the participant and families.</li> <li>▪ NDIS arrangements for crisis and after hours issues, such as accommodation breakdown and homelessness</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>The OPA informed the development of complex client pathways for NDIS transition and ensuring that OPA clients have access to specialist support coordination within their NDIS plans.</b></li> <li>▪ <b>Ongoing issue as the unique role of a statutory guardian is not yet resolved in the NDIS systems and processes.</b></li> <li>▪ <b>Issue escalated to NDIA senior staff as a ‘red-tape’ issue for resolution.</b></li> <li>▪ <b>Issue escalated to NDIA senior staff as the NDIA has the lead role as “market steward”.</b></li> <li>▪ <b>Issue escalated to a national level: the NDIA has moved additional resourcing into national review teams to ensure a timely response to review requests.</b></li> <li>▪ <b>Ensuring OPA clients have funds for critical services such as emergencies after business hours</b></li> </ul>





## Disability Advocate

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In November 2018 Dr David Caudrey was appointed Disability Advocate for South Australia for a one-year term. Located within the OPA, the role involves hearing from NDIS participants and their families about their experience of the NDIS and advocating so that South Australians with disability get the best plan possible from the NDIS.

Between January and July 2019 over one hundred and thirty stakeholder engagements were undertaken, including forums with participants and their families to gather first-hand accounts of their NDIS experiences. While there is a high level of satisfaction with the NDIS, there are many people who have had issues with the planning process associated with the NDIS.

The Disability Advocate produced monthly reports on operational issues (timeliness and accuracy of actions) and system issues (design matters) which are referred to state government departments and to the NDIA.

One particular issue impacting on the OPA's guardianship clients is the lack of a 'case management' system for people with complex support needs. It has been argued that the OPA's clients who meet eligibility for the NDIS (85 percent of the 670 clients under 65 years as at 30 June 2019) should all be eligible for the new NDIS complex support needs pathway.

### Use of restrictive practices in disability settings

Sometimes people with impaired decision-making capacity and/or psychosocial disability will need help and support to make sure that they receive proper care and that they are safe. This includes the provision of help and support to people if they sometimes behave in ways which puts them, or others, at risk of physical harm (often described as 'challenging behaviours'). It may be necessary, if there is no other positive way, to restrict a person's rights and freedom of movement from time-to-time in order to reduce the risk of physical harm arising from certain behaviours. Such restrictions are what are known as 'restrictive practices'.

Restrictive practices include things like using medication for the main purpose of stopping or managing someone's challenging behaviour (chemical restraint), restricting a person's access to parts of their environment (environmental restraint), using devices primarily to stop or manage a person's challenging behaviour (mechanical restraint), using some physical force to stop the person's behaviour (physical restraint) or detaining a person in the

place that they live or stay so that they cannot leave if and when they want to (seclusion and/or detention).

Restrictive practices must only be used when there is no other, less restrictive, alternative which would allow the person to receive proper care and stay safe. Other, positive support options should always be considered first. In 2014 the Commonwealth, and State and Territory Ministers for disability, endorsed a National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector.

There are different requirements for the consent and authorisation of restrictive practices under South Australian law, depending on the practice that is being used. The most serious types of restrictive practices that might be used in disability settings; the use of force to provide care or treatment and detention of a person in their place of residence; require SACAT's authorisation by the making of an order under section 32 of the *Guardianship and Administration Act (SA) 1993*.

A big change for disability service providers was the NDIS Quality and Safeguards Commission (**the NDIS Commission**) commencing operation in South Australia on 1 July 2018. The NDIS Commission is an independent body separate from the NDIA (the NDIA being responsible for the assessment and funding of disability supports). The NDIS Commission works with NDIS participants and service providers to monitor and regulate the safety and quality of support services delivered under the NDIS.

In particular, the NDIS Commission is responsible for the registration and regulation of NDIS service providers. This includes the monitoring of registered NDIS providers' use of certain types of restrictive practices (regulated restrictive practices) and making sure that the proper consents and authorisations are provided for the use of those restrictive practices under the laws of the States and Territories.

These changes are significant for service providers operating under the NDIS and NDIS participants alike, and it can be a challenge for all to understand the interplay between the NDIS legislation and South Australian law about authorisation of restrictive practices.

The OPA's role in this system as guardian is to provide consent to restrictive practices that require a guardian's consent, and to seek authorisation from SACAT for restrictive practices that involve the use of force or detention. This role involves considering whether the restrictive practice is supported by evidence in a positive behaviour support plan and being satisfied that there is no less restrictive option that would avoid the use of the restrictive practice.

The NDIS Commission's rules require that a positive behaviour support plan is obtained to address any restrictive practices which are proposed by registered NDIS providers. The OPA has found that there appears to be a lack of suitably qualified positive behaviour support practitioners operating in South Australia to meet the demand for production of timely positive behaviour support plans.

The OPA also undertakes systemic advocacy in relation to the reduction and elimination of restrictive practices in disability settings. An important part of that role is providing information to individuals and service providers about the use of restrictive practices both via its Information Service and by undertaking education sessions.

In 2018-19 the Public Advocate presented alongside the NDIS Commission at a series of 5 metropolitan and regional forums for NDIS service providers in Adelaide, Mount Barker, Whyalla, Mount Gambier and Berri. The OPA has continued its work in assisting individuals and providers within the disability sector with information and education about restrictive practices.

## **Unmet need for people with impaired decision-making capacity accessing disability services**

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### **1. Appropriate Accommodation**

In 2018-19 the OPA continued to highlight that demand outstrips the supply of suitable accommodation options for clients with disability and particularly options for supported independent living. The shortage of appropriate accommodation contributes to lengthy waiting periods for clients who need to move to better accommodation which will enhance their rights and independence.

Accommodation supply favours the group home model which offers little choice to clients about who they live with as well as limited flexibility about the structure of daily activities. There is a need for an increased supply of independent supported accommodation with tailored services to meet individual need and choice.

The provision of the 100 disability specific homes, as part of the 1000 Homes in 1000 Days initiative by SA Government delivered by Renewal SA, was due to be completed in 2018-19. Of those 100 homes, 50 will be fitted with assistive technology as part of the NDIS Specialised Disability Accommodation initiative. Approximately 22 OPA disability clients are under consideration for this accommodation.

The '100 disability specific homes' is a welcomed initiative. However, accommodation has continued to be an issue for clients with disability. The OPA, acting as guardian, will sometimes need to make accommodation decisions for its clients based on available resources rather than a person's expressed wish or what would better meet their needs or maximise their independence and control. In these situations, the OPA advocates to ensure that the accommodation meets a client's needs and wishes as far as practicable.

At the end of 2018-19 the OPA had approximately 30 guardianship clients who were under 65 and living in residential aged care facilities. Many of this group of clients would more appropriately be housed in disability supported accommodation but there is a significant gap in the market for this type of housing.

The NDIS Specialist Disability Accommodation market is an opportunity for development of more flexible and tailored supported independent housing opportunities and the OPA hopes to see this as the market matures and expands.

## 2. Separate disability and mental health forensic services

The OPA has advocated for some time about the need for a specialist forensic disability service which is separate from forensic mental health services. Whilst a number of specific disability beds were funded at the South Australian Forensic Mental Health Service (James Nash House (JNH)) in recent years, the service remains co-located within JNH. These client groups have different needs and require different models of support and ideally would be accommodated in a dedicated service and site. In 2018-19 the Public Advocate was a member of the James Nash House Oversight Committee and met regularly with senior staff and clients.

The OPA continues to work closely with James Nash House about the needs of forensic patients with impaired decision-making capacity. The OPA has also continued to liaise with the NDIA about both individual issues relating to clients under guardianship and systemic issues about timely discharge planning for people transitioning from forensic services and prisons.

## Addressing unmet need in the disability sector

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OPA has identified the following strategies to address unmet need in the disability sector:

1. A range of supported independent living accommodation options for disability clients that support choice, flexibility and independence
2. Continued research and focus on the 'younger people in residential aged care' population to devise strategies for access to more appropriate accommodation
3. Access to specialist support coordination for people with impaired decision-making capacity and complex needs
4. Expansion and refinement of the new NDIS complex client pathway to include all eligible OPA guardianship clients
5. Access to better and clearer information for the disability sector, and those engaging with it, on the use and authorisation of restrictive practices
6. Market expansion in the areas of suitably trained positive behaviour support specialists and specialist support coordinators
7. A specialised forensic disability service which is separate from forensic mental health services.

## Mental Health Services in 2018-19

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The OPA's advocacy in respect of mental health services in 2018-19 focused on older people and mental health, inpatient rehabilitation services and the transition of people with psychosocial disability to the NDIS.



### Older People Mental Health Services

The provision of services for older people with mental health conditions continued to be a key issue for the OPA in 2018-19, following on from the Oakden report and the closure of the Oakden Older People's Mental Health Service. In 2017-18 the Public Advocate became a member of the Models of Care Expert Working Group (EWG) and was a member of the Oakden Oversight Committee. The Committee was charged with responding to the issues raised in the Oakden report and redesigning the service.

The Oversight Committee delivered the report of the work of its Expert Working Groups in June 2018. The EWG developed layered models of care for people with Behavioural and Psychological Symptoms of Dementia (**BPSD**) (focusing on severe and extreme) and for older people with enduring mental illness. The report highlighted the value of access to expert mental health services for people with severe and extreme BPSD and severe and enduring mental illness, in order to meet their clinical needs.

During 2018-19 the OPA continued to foster links with SA Health Older People's Mental Health Services and work together to ensure guardianship clients who moved from the former Oakden Older People's Mental Health Service received suitable and high quality care and services. The OPA has continued to work closely with Northgate House in particular in respect of the transition of clients out of Oakden.

The new model of care implemented at Northgate House adopts a multi-disciplinary approach and includes a number of mental health and allied health professionals. In OPA's observations, the model of care has seen less restrictive practices, more personalised care planning/delivery of care and increased staff ratios. This has resulted in better health and care outcomes for individuals as well as increased engagement of those individuals. Some clients under the Public Advocate's guardianship have now been able to move out of Northgate House and into mainstream residential aged care.

### Glenside Inpatient Rehabilitation Service

A review of mental health inpatient rehabilitation services located at Glenside campus, commissioned by Central Adelaide Local Health Network (**CALHN**) was completed in April 2019. The review made 30 recommendations including that a desired model of care for inpatient rehabilitation services be developed.

CALHN accepted all recommendations of the report and developed an action plan to address them. The Intensive Monitoring and Inpatient Rehabilitation Services Report Recommendation Governance Steering Committee (**the Steering Committee**) was established to oversee implementation of the action plan. The Public Advocate joined the Steering Committee as a member and has attended bimonthly meetings.

The Public Advocate will continue involvement as a member of the Steering Committee during 2019-20.

### NDIS and Psychosocial Disability

Since the commencement of the NDIS the OPA has assisted guardianship clients with a psychosocial disability to transition to the NDIS. All clients with psychosocial disability in receipt of services were due to transition to the scheme by 30 June 2019, meaning that in 2018-19 there was considerable focus on assisting clients to access the NDIS.

The OPA has built links with mental health services and non-government organisations to support this client group as they make the transition to the NDIS. The OPA has continued its contribution to SA Health's NDIS Implementation Group.

The OPA has participated in the South Australian NDIS Psychosocial Disability Transition Taskforce during 2018-19. The taskforce operates through the Office of the Chief Psychiatrist and monitors the impact of the NDIS transition arrangements on clients and service providers, with a focus on ensuring continuity of service for clients, developing solutions and advising on appropriate action. The taskforce meets monthly and comprises of state and commonwealth government agencies, a range of non-government agencies and representatives with lived experience of psychosocial disability.

### Appropriate accommodation for people with complex mental health

Suitable accommodation options and flexibility in choice of service provider continued to be an issue for guardianship clients living with complex mental health issues. As part of the 100 disability specific homes committed to the '1000 homes in 1000 days' initiative, 31 homes were allocated to people with psychosocial disability.

The OPA is part of the project team supporting this work and 22 OPA guardianship clients with psychosocial disability have been allocated to this program. During 2018-19 some clients began the process of moving into these properties, with services supporting them to exercise choice and control in respect to their living arrangements.

## Unmet need for people with impaired decision-making capacity in mental health services

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### 1. Appropriate Accommodation

There is a lack of supply of supported accommodation for people living with mental health conditions. For a number of OPA clients this has led to some people remaining in acute care settings for inappropriately long periods and in prison inpatient rehabilitation services.

The Housing and Support Partnership (**HASP**) Program in South Australia, of which there are a limited number of packages, remains in high demand. This program is a state government initiative operating as a four-way partnership between the consumer, a housing provider, psychosocial rehabilitation and support service and Community Mental Health Services. HASP is a good model for many people and there is sufficient demand to increase the number of HASP packages available.

HASP adheres to a 'recovery model' where people must be able to engage in to be accepted into the program. The recovery model works well for many clients. However, for others with long term and chronic mental health conditions this is not an appropriate model to meet their needs. Participants in the program must also be capable of giving informed consent to participate in the program, which is not always possible for clients under guardianship who have varying levels of mental incapacity.

Supported Residential Facilities (**SRFs**) tend to be one of the only other community based supported housing options for mental health consumers. The SRF sector is an important housing option for OPA guardianship clients as they are often not able to find alternative suitable accommodation. However, people with complex needs and challenging behaviours are often assessed as ineligible for SRF accommodation because of the high level of support and supervision they require. Even when clients in this group have been assessed as eligible for SRF accommodation, it may not be appropriate for their circumstances and needs given the nature of large scale congregate living and, in many cases, sharing of rooms. It is often considered as housing of 'last resort' and not necessarily appropriate for people under guardianship with complex mental health needs. There are no female-only SRFs, meaning that female residents can be vulnerable in this type of accommodation.



Similar to SRFs, boarding or rooming houses are generally not appropriate for OPA guardianship clients, due to the nature of the congregate living arrangements and the lack of support beyond some meals. Occasionally the OPA has no other option but to consent to a person under guardianship going to live in a boarding house to avoid homelessness.

The 31 psychosocial disability specific homes have been a very welcome initiative. However, without a steady supply of disability specific housing options, housing will continue to be an issue for people with mental health needs. In particular, people with psychosocial disabilities who could, with the right type of housing, be supported to live in the community will remain in inpatient beds, forensic mental health services or in prison, with significant impact on their rights and at great cost. The numbers of people for whom it is very difficult to secure appropriate supported accommodation at any given time are relatively low. However, the impact on clearing those systems blockages can be very significant, in terms of making sure people get the services they need.

## 2. Psychosocial disability transition to NDIS

It was estimated by the Productivity Commission that 4,800 people in South Australia with a primary 'diagnosis' of psychosocial disability would be eligible for the NDIS at full scheme. At 30 June 2019 there were only 950 South Australians identified. It is imperative that every effort is made to locate potential NDIS participants to test their eligibility and to develop good support plans for each of them.

## Addressing unmet need in the mental health sector

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OPA has identified the following priority actions to address these gaps in support for people living with mental health issues:

1. Development of a broad range of accommodation options that includes access to independent living accompanied by 24-hour support
2. Increased focus on identifying people with psychosocial disability who may be eligible for NDIS support and ensuring that access requests are made to the NDIA
3. Enhanced collaboration between NDIS and mental health services to ensure that people with complex needs do not fall between the two service systems.

## Aged Care in 2018-19

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In 2018-19 the OPA continued to advocate for and promote that the rights of older people be preserved and respected as they engage with aged care services. The OPA provided a number of education sessions for both aged care providers and people in the community covering areas including advance care directives, consent to medical treatment under the *Consent to Medical Treatment and Palliative Care Act (SA) 1995*, supported decision making and restrictive practices.

The Public Advocate provided information to the Royal Commission into Aged Care Quality and Safety about key areas of unmet need for people under guardianship who are receiving aged care services in South Australia and included recommendations for systemic improvements.

During 2018-19 the OPA was involved in a Supreme Court of South Australia case about detention in a residential aged care facility. The case has important implications about when special powers orders under section 32 of the *Guardianship and Administration Act (SA) 1993* are needed to authorise detention in residential aged care facilities. The OPA will continue to assess the implications of the case and assist the community in providing information about aged care (and disability accommodation) and detention.



### My Aged Care

OPA has written in previous annual reports and submissions about the difficulties in using the My Aged Care online portal, which is the starting point for access to aged care services. Many people have reported to have difficulty accessing the portal and it is especially confusing for people acting as representatives. The AGAC advocated extensively for reform

in this area and the Commonwealth Department of Health produced a guide for representatives using the system in March 2018.

While this guidance is helpful, particular difficulties remain for organisations representing people needing care (such as the OPA when acting as guardian) because there is no provision for an organisation log-in.

Without access to the portal, OPA staff follow a more time-consuming, manual process for registering as the representative for a person under guardianship. Similar barriers to the online system exist with this process. During 2018-19 the OPA continued to advocate for the development of better systems, including organisational MyGov accounts, for engaging with My Aged Care. The OPA would be better and more efficiently able to support people under guardianship who are receiving, or trying to receive, aged care services if improvements were made to the way in which organisational representatives can engage with My Aged Care.

## **Unmet need for people with impaired decision making capacity receiving aged care services**

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### **1. Restrictive Practices**

The use of restrictive practices is an issue for people with impaired decision-making capacity receiving aged care services, as it is for people receiving disability services. Restrictive practices that are sometimes used in the course of providing aged care include chemical restraint, mechanical restraint and detention (including locked wards).

There is no national legal framework for the regulation or authorisation of restrictive practices in the *Aged Care Act (Cth) 1997*. The Commonwealth Department of Health has produced detailed decision-making toolkits for supporting a restraint free environment in both community based and residential aged care. However, the legal framework for regulation and authorisation of restrictive practices is found mostly in state and territory law. For large aged care services providers operating nationally, the lack of a clear and consistent national framework may be a contributory factor to improper, inconsistent or unauthorised use of restrictive practices in aged care settings.

The role of positive behaviour support strategies and planning is important and the OPA considers that, as with the disability sector, the development of positive behaviour support plans by suitable trained and qualified practitioners is key to reducing and eliminating the use of restrictive practices in aged care.

### **2. Receiving necessary care at home**

Evidence from the first hearings of the Royal Commission into Aged Care Quality and Safety in February and March 2019 demonstrated that there continues to be considerable unmet demand for home care packages, and that the average wait time for level 3 and 4 home care packages is more than 12 months.

In the OPA's experience as guardian, making accommodation decisions for older people, the delay in receipt of home care packages can sometimes lead to people having to go into residential aged care prematurely. Sometimes situations arise where:

- the person cannot safely remain at home while waiting for a home care package or
- the person has been admitted to hospital during a health crisis, but is ready for discharge and cannot safely return home without a home care package. Nor is it appropriate that they remain in a hospital bed for months while waiting for the home care package.

In these situations, the OPA has little choice but to consent to a residential aged care placement as the next most appropriate accommodation capable of meeting the protected person's needs whilst ensuring that they are properly care for and protected.

A significant and immediate increase in the number of Home Care Packages available to South Australians is required. The OPA has identified that there needs to be faster access to home care packages for people who need them. For this to happen there must be more home care packages available at all levels and a more streamlined approach to assessment and design of care packages.

While the need for home care often becomes particularly urgent at the point a person becomes admitted to hospital, earlier access to home care services may reduce hospital admissions.

In addition to availability of home care packages, there may be a benefit in greater investment in the Transition Care Program or other step-down approaches to providing care for older people post-hospital admission. Provision of interim services may assist in reducing urgency of care planning and making decisions about accommodation, often arising from impending hospital discharge. They may also provide the time and opportunity to finalise care arrangements or to receive the rehabilitation needed to return home.

There are limitations to step-down approaches and they should not replace the timely delivery of home care packages that a person has been assessed as needing. Ultimately, faster access to appropriate care at home would reduce much of the need for step-down services. Ideally, step-down packages should focus on rehabilitation rather than awaiting placement. Faster access to appropriately funded home care packages would also likely result in an older person being moved fewer times.

A shift toward formal recognition of supported decision-making for people may assist older people to access the right care to meet their needs. It would do so by ensuring that the will, preferences and rights of the person in need of care are protected during the process of deciding on a package of care or residential care placement, even where that person has some impaired decision-making capacity.

In this context, supported decision-making would assist by putting the onus on finding care that reflects the will and preferences of the older person.

## Addressing unmet need in the aged care sector

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The OPA has identified the following strategies to address unmet need in the aged care sector:

1. Development of a nationally consistent legal framework for the regulation and authorisation of restrictive practices in aged care
2. Market expansion in the areas of suitably trained positive behaviour support specialists
3. An increase in the number of Commonwealth funded home care packages, with more prompt access to people who have been assessed as needing them
4. Recognition of the role of supported decision making in aged care.

## Elder Abuse

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The OPA is active in promoting the rights of older people and developing strategies to recognise, prevent and respond to the abuse of older persons.

One of the key strategies to reduce the risk and incidences of elder abuse is to empower older people by informing them of their rights and the legal and informal responses that are available to them. The OPA does this through its Information Service that operates by telephone and in-person.

The OPA's Information Service provides information to community members, health professionals and service providers. This includes providing information about making legally binding enduring documents (advance care directives, enduring powers of attorney) that can enforce a person's wishes about their own care and affairs if there comes a time when they are no longer able to make their own decisions. The OPA also provides this information in community and professional education sessions and forums.



### The Adult Safeguarding Unit (ASU)

*Office for the Ageing (Adult Safeguarding) Amendment Bill (Cth) 2018* was passed by Parliament on 14 November 2018 and the South Australian Adult Safeguarding Unit is due to start operating in October 2019. The OPA supports the establishment of the Adult Safeguarding Unit and has been involved in developmental work of the Adult Safeguarding Unit by participating in workshops and providing written submissions about the draft bill, the Regulations for the Act and the Code of Practice that will direct the work of the ASU. The next phase of the work will be to develop a Memorandum of Administrative Arrangement between OPA and the ASU to develop information sharing protocols and referral processes between the agencies.



### Alliance for the Prevention of Elder Abuse (APEA)

Twenty years ago, in late 1998 the OPA, Public Trustee, Legal Services Commission, SA Police and Aged Rights Advocacy Service came together to form the Alliance for the Prevention of Elder Abuse (**APEA**). The member agencies agreed to combine their efforts to raise awareness of elder abuse and to promote strategies to empower older citizens and to prevent or minimise the risk of abuse.

In December 2018 APEA celebrated its 20th anniversary with an event at Aged Rights Advocacy Service. This provided a time for reflection on the significant achievements made by APEA since its inception in 1998 which include delivering free Information sessions and seminars to community members, service providers and other professionals throughout South Australia on the topic of elder abuse. Financial abuse was assessed as being the most common form of abuse for older people and APEA has taken considerable steps in addressing this, working with banks and other financial institutions to help staff identify abuse and how to improve responses to it.

With the aim of empowering community members, APEA has developed written publications including, Witnessing Documents, Safeguard your Finances, Appointing an Enduring Power of Attorney, the Roles and Responsibilities of an Enduring Power of Attorney and Recipes for Living Well. These valuable resources and other publications can be found on the APEA website [www.apea.org.au](http://www.apea.org.au).



Photo 1: APEA members celebrating the 20th anniversary of the Alliance.



## OPA Projects

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### What is supported decision-making?

Supported Decision Making is about supporting people with impaired decision-making capacity to participate in making their own decisions or expressing their wishes. The aim of supported decision making is to enable people with disabilities to exercise their rights to make decisions and choices about their lives for as long as possible.

The United Nations Convention on the Rights of Persons with Disabilities states that people should make their own decisions wherever possible and that they should receive support necessary to help make those decisions rather than appointing another person to make substitute decisions for them.

The Australian Law Reform Commission (2014) has developed a set of National Decision Making Principles which provide a framework for the review of state, territory and Commonwealth legislation.

Supported decision making continued to be a key priority area of research and development for the OPA in 2018-19. The OPA's interest in this topic is motivated by national and international legal and policy reforms and modernisation that impact on guardianship and substitute decision-making models to help ensure greater autonomy for people with impaired decision-making capacity.

### Lifetime Support Authority (LSA) Project

In 2017-18 the OPA received a Lifetime Support Authority (**LSA**) grant to produce a policy and practice framework to implement supported decision making principles for LSA participants with an acquired brain injury. The LSA administers the Lifetime Support Scheme, which provides treatment, care and support for people who have sustained very serious injuries in a motor vehicle accident, regardless of fault.

The project tested supported decision-making with a group of LSA client's to shape the development of the policy and practice framework. The OPA partnered with the New South Wales Office of the Public Guardian, who provided training to the LSA staff due to their experience and work in this field.

### Key outcomes

The key outcome of this project was the development of a supported decision making framework, policy and practice guide for LSA staff. This included the development of a model of supported decision making and role clarification, of decision maker, supporter, facilitator and monitor.



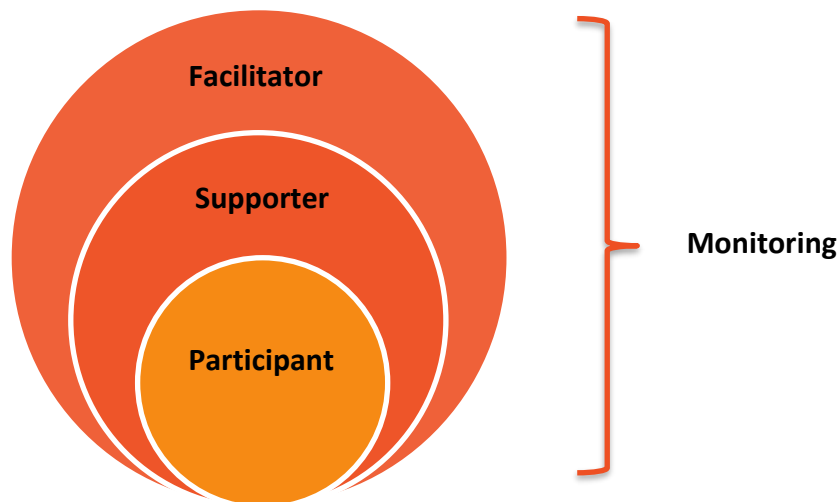


Figure 1: Decision making roles

### Law Foundation Project

In 2017-18 the OPA completed a project on Supported Decision-Making funded by the South Australian Law Foundation to examine the extent to which supported decision-making principles were shown in OPA guardianship decision-making. In 2018-19 the OPA obtained a second Law Foundation grant to build on that work and included:

1. a review of decision-making categories and law reform opportunities
2. consultations with OPA staff and external stakeholders from government and legal bodies and NGOs
3. development of policy and practice guide for guardianship.

### Key outcomes

Outcomes from the 2018-19 Law Foundation project included:

1. Recommendations for legislative change to the *Guardianship and Administration Act (SA) 1993* including the definition of mental incapacity and minor changes to the language and principles of the *Guardianship and Administration Act (SA) 1993* to ensure consistency with human rights principles
2. Further examination of all relevant South Australian Acts which address guardianship, mental health and related principles of decision making and to seek reforms to align them with the Australian Law Reform Commission's recommendations and Article 12 of the United Nations Convention on the Rights of People with Disability
3. Development of a supported decision making policy and practice framework to assist OPA staff in implementing supported decision-making for guardianship clients.

### Supported Decision Making Interest Group

The OPA has developed and chairs a Supported Decision Making Interest Group consisting of government and non-government stakeholders. The purpose of the group is:

1. to share the outcomes of OPA's supported decision making project work completed to date
2. create a forum for stakeholders to share their work and ideas in the area of supported decision making
3. discuss opportunities for putting supported decision-making into practice in South Australia.

The group will continue to meet quarterly throughout 2019-20.

### My Life Decisions initiative

In 2017 the OPA completed a *Goals of Care* project. This initiative aimed to enable people with impaired decision-making capacity and who, therefore could not make a legally binding advance care directive, to document their future wishes. The project was led by the OPA and Margaret Brown, Adjunct Research Fellow, Hawke Institute, University of South Australia. The final draft report was completed in early 2018.

The pilot study tested the value of a Goals of Care Plan form to document clients' wishes. The research indicated that development of a document for recording of wishes in respect of life decisions may:

- assist all interested parties in understanding people's wishes and avoid crisis management
- assist health professionals in understanding the difference between 'best interests', 'substitute decision making', and 'supported decision making' and
- provide a better understanding about when to initiate discussions about sensitive issues such as end of life decision making.

During 2018-19 improvements were made to the Goals of Care Plan, which was used to develop a My Life Decisions document. The next phase of this work is to pilot My Life Decisions as a tool for recording the wishes about future decisions of people living with impaired decision making capacity. The OPA is working with potential partners to develop this initiative further during 2019-20.

## Business Improvement Projects

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### Early Intervention Project and Evaluation

In 2017-18 the OPA implemented its early intervention system for allocating new guardianship matters to guardianship staff. The early intervention project was developed and piloted in 2016-17.

The early intervention system aimed to deliver greater efficiency in the delivery of adult guardianship services through a streamlined and early allocation system. The system was subject to an external evaluation during 2018-19 with the aim of identifying further opportunities to enhance the system and service delivery. The evaluation identified areas of improvement in the allocation system which will ensure that:

- matters are allocated to guardianship teams and staff promptly
- there is consistency in approach to management of client matters and caseloads
- caseloads are managed with reference to the complexity of matters
- staff are supported appropriately in delivery of guardianship services
- the OPA will implement the enhancements to the early intervention system during 2019-2020 and
- the OPA Process Improvements (Decision Making), Strategic Plan and KPIs.

### Audit and Risk

In 2018-19 an internal audit of OPA considered key processes and OPA's overall performance. The audit identified a number of areas for business improvements which have been adopted including:

- improved documentation of decision-making processes and procedures
- the development of a strategic plan
- The development of key performance indicators (KPIs).

### Strategic Plan

OPA's Strategic Plan 2019-21 was finalised in March 2019. The Strategic Plan sets out OPA's vision, goals and the outcomes that it seeks to achieve over a three year period. There are four overarching areas of strategic priority:

1. Excellence in operations and service delivery
2. Professional, trained and effective workforce
3. Engagement and influence
4. Research and innovation.

The OPA has also developed KPIs to measure the performance of the Strategic Plan and will be used in quarterly reporting to the leadership team.

OPA produced and improved existing policy and procedure documents in respect of decision-making and compliance with delegations of the Public Advocate's authority. These policy and procedure initiatives will help OPA improve its service delivery to guardianship clients and help OPA achieve its vision and goals of the Strategic Plan.

# Engagement

## Meetings

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In 2018-19, the Public Advocate met with key Ministers to discuss systemic issues.

Meetings were held with the following Ministers and Members of Parliament:

Hon Vickie Chapman MP, Attorney-General

Hon Stephen Wade, MLC, Minister for Health and Wellbeing

Hon Michelle Lensink MLC, Minister for Human Services.

During these meetings, the Public Advocate raised and discussed issues relating to the functions of the Public Advocate including:

- Transition of OPA guardianship clients to the NDIS and NDIS operational issues
- Supported Decision Making
- Restrictive practices, Elder abuse and adult safeguarding
- Supply of supported accommodation for people with complex needs
- The '1000 Homes in 1000 Days' initiative (including the 31 psychosocial disability homes)
- Health care for people under guardianship.

## Written Submissions

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The OPA provided feedback and submissions about legislation and policy issues as follows:

- Modernisation of the *Guardianship and Administration Act (SA) 1993*
- The 5 year review of the *Advance Care Directives Act (SA) 2013*
- The draft Bill and regulations to establish and support the new South Australian Adult Safeguarding Unit (*The Office for the Ageing (Adult Safeguarding) Amendment Bill 2018*, and the draft Ageing and Adult Safeguarding Regulations 2019)
- The South Australian State Disability Inclusion Plan
- The Commonwealth Joint Standing Committee on NDIS Market Readiness
- The Redesign of the Repatriation Hospital Precinct
- SA Health's Consultation Paper on Considering a model for mandatory assessment and/or treatment for those at extreme and immediate risk and based on the Victorian Severe Substance Dependency Treatment Act 2010
- The Social Development Committee in relation to the provision of services for people with mental illness under the transition to the NDIS
- The Senate Standing Committee's review of the *Aged Care Quality and Safety Commission Bill (Cth) 2018*
- The development of South Australia's *Housing and Homelessness Strategy* and
- The OPA also provided information to the Royal Commission into Aged Care Quality and Safety.

# Appendices

## Legislation

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General functions under the Guardianship and Administration Act 1993 (**GAA**).

The general functions of the Public Advocate are set out in section 21(1) of the GAA:

1. to keep under review, within the public and private sector, all programmes designed to meet the needs of mentally incapacitated persons
2. to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes
3. to speak for and promote the rights of any class of mentally incapacitated persons or of mentally incapacitated persons generally
4. to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by that person arising out of his or her mental incapacity
5. to give support to and promote the interests of carers of mentally incapacitated persons
6. to give advice on the powers that may be exercised under the Act in relation to mentally incapacitated persons, on the operation of the Act generally and on appropriate alternatives to taking action under the Act
7. to monitor the administration of the Act and, if he or she thinks fit, make recommendations to the Minister for legislative change.

The Public Advocate may be appointed as the guardian (or joint guardian) of a person with mental incapacity but only if the SACAT considers that no other order would be appropriate.

### Other applicable legislation

*Advance Care Directives Act 2013 and Regulations*

*Consent to Medical Treatment and Palliative Care Act 1995 and Regulations*

*Criminal Law Consolidation Act 1935*

*Mental Health Act 2009*

*Mental Health Regulations 2010*

*Powers of Attorney and Agency Act 1984*

*Problem Gambling Family Protection Orders Act 2004*

*Wills Act 1936*

## Glossary of Terms

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AGAC	Australian Guardianship and Administration Council
ALRC	Australian Law Reform Commission
APEA	Alliance for the Prevention of Elder Abuse
CALHN	Central Adelaide Local Health Network
DHW	Department for Health & Wellbeing
DHS	Department of Human Services (SA)
DHW	Department of Health and Wellbeing (SA)
DRS	Dispute Resolution Service
HASP	Housing and Support Partnership
LSA	Lifetime Support Authority
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Q&SC	NDIS Quality and Safeguards Commission
OPA	Office of the Public Advocate
SACAT	South Australian Civil and Administrative Tribunal
SRF	Supported Residential Facility

## Compliance with Premier and Cabinet Circular (PCO13) on Annual Report Requirements

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The following table provides the Office of the Public Advocate's compliance with the Department of Premier and Cabinet Circular (PCO13) on Annual Report Requirements:

PCO13 Statutory Reporting Requirement	
Employment opportunity programs	Refer to the Attorney-General's Department ( <b>AGD</b> ) Annual Report 2018-19
Agency performance management and development systems	Refer to the AGD Annual Report 2018-19
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2018-19
Work health and safety and return to work performance	Refer to the AGD Annual Report 2018-19
Fraud detected OPA	Number of instances – 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2018-19
Whistle-blowers' disclosure	Refer to the AGD Annual Report 2018-19
Executive employment in the Agency	Refer to the AGD Annual Report 2018-19
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2018-19
Complaint outcomes (table)	Refer to the AGD Annual Report 2018-19

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