



# PUBLIC ADVOCATE ANNUAL REPORT 2023-2024



Government  
of South Australia

Office of the Public Advocate



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Date presented to Minister:	20 September 2024

### **Acknowledgement of Country**

Aboriginal people have made and continue to make a unique and irreplaceable contribution to the state of South Australia. The OPA acknowledges and respects Aboriginal people as the state's first people and nations and recognises Aboriginal people as traditional owners and occupants of South Australian land and waters.

To:

Hon Kyam Maher MLC  
Attorney-General

I am pleased to present this annual report to Parliament in accordance with the requirements of section 24 of the [Guardianship and Administration Act 1993](#) (SA) and 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.

Submitted by the Public Advocate.

A handwritten signature in blue ink, appearing to read 'Anne Gale', is positioned above the printed name.

Anne Gale  
**Public Advocate**



## About the artwork

The artwork by Ngarrindjeri artist, Jordan Lovegrove, portrays the role of the Public Advocate in supporting people with disabilities who require assistance in decision-making. The central meeting place represents the Public Advocate, with four coloured rings symbolising their core values:

- **People Focused:** advocating for the dignity and rights of vulnerable individuals
- **Agile:** adapting to meet the needs and expectations of the community and clients
- **Accountable:** acting truthfully, fairly, and professionally
- **Resilient:** supporting each other in a challenging environment.

The smaller meeting places represent the diverse individuals and communities that the Public Advocate supports. The artwork's pathway shows how the Public Advocate helps these people and families through:

- Assisting people with guardianship orders that appoint the Public Advocate to make important life decisions (about where they might live, their health and the services and supports they receive)



- Providing information to South Australians about supporting people who need help to make decisions whilst respecting their rights
- Mediating and helping families to resolve disagreements about their family members whom they are assisting with decision-making
- Advocating for the rights and safety of adult South Australians with impaired decision-making ability.

The Public Advocate is supported by the Office of the Public Advocate (OPA), which promotes and safeguards the rights of individuals with impaired decision-making ability. The OPA's services extend across South Australia, supporting individuals with disabilities in various settings, including homes with support, supported disability housing, residential facilities, and aged care. The OPA is committed to understanding and respecting the wishes of people with guardianship orders appointing the Public Advocate as their guardian.

The OPA acknowledges that the spiritual, social, cultural and economic practices of Aboriginal people come from their traditional lands and waters, and that Aboriginal people maintain important cultural and heritage beliefs, languages and laws.

## Terminology in this report

The term 'Aboriginal' is used respectfully in this annual report to refer to all people of Aboriginal and Torres Strait Islander descent who are living in South Australia.

The report uses the terminology 'people with disabilities' to refer to the disability community. The OPA acknowledges and respects that there is a range of views about language and celebrates the right of all people to identify as they see fit.

The term 'mental incapacity' is used in the *Guardianship and Administration Act 1993 (SA)* as the basis upon which the South Australian Civil and Administrative Tribunal (SACAT) can appoint a guardian. The OPA recognises that this terminology can be troubling for some people and so, where appropriate, this report will use the term 'impaired decision-making ability'. Where 'mental incapacity' is used, it refers to the terminology of the governing legislation.

The term 'client' is used to refer to a person for whom SACAT has made an order appointing the Public Advocate as the person's guardian.



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# Introduction

## Message from the Public Advocate

The past twelve months saw a continued increase of 13% in the number of South Australian adults having the Public Advocate appointed as their guardian, with 2513 clients assisted overall during the year.

The primary growth factors continue to be the ageing population; decision-making related to the NDIS; restrictive practice reforms in aged care; and the need for detention orders where a person cannot access the community independently and would be at risk of harm if they did. Over the past five years, the compound annual growth rate in guardianship clients has been more than 15%, creating challenges in safeguarding people with guardianship orders.

News of an additional \$5.6M over four years in the State Budget was gratefully received on Budget Day, and I thank the Attorney-General for his support and recognition of this need. This boost will assist my office in performing its functions and responsibilities.

During the past year, the critical issues experienced for clients with a guardianship order include:

- lack of suitable and affordable housing
- difficult access to mental health assessments and treatment in both inpatient and community mental health services
- limited access to aged care placements and home care packages
- delays in NDIS planning and plan reviews
- overspending on clients' NDIS plans by service providers, leading to risk of plan failure and inappropriate hospitalisation.

The housing crisis has been with us in recent years and sharply noticeable for clients with disability who can experience discrimination or exclusion from housing services. Protected people, as clients of the state, should have access to social and community housing where rents are affordable (25% of income, plus rent assistance) and housing tenure is secure. Rather, they tend to be housed in the private rental market paying full market rent to a disability provider who has become the landlord and paying up to 80% of their pension to the provider. This results in a combined tenancy and support arrangement that is not sustainable due to the cost of rent and the cost of living. If the support fails, the tenancy is also lost.

Leadership in the social housing sector is required to develop a comprehensive disability housing strategy in South Australia.



Access to mental health assessments is difficult for people with an intellectual disability. The intellectual disability diagnosis can be an exclusionary factor for mental health services and/or the mental health condition is not noticed due to the intellectual disability.

As reported widely, there is still an insufficient number of aged care home packages and clients are often inadequately supported in the community or prematurely admitted to residential aged care. In the past year, the supply of residential aged care places has tightened, and this office has experienced difficulties in finding them with providers being more selective about who they will accept.

The NDIA has experienced backlogs in plan reviews and the OPA has worked with them to escalate urgent matters. These delays can result in providers overspending or over-utilising plans leaving clients with depleted funds. In some situations, this has led to providers sending people to hospital for a social admission. This office and the NDIA have worked together to avoid this wherever possible.

My office continues to pursue evidence-based projects about supported decision-making. Recent project deliverables include the implementation of a new “My Life My Wishes” tool and the trailing of a tool specifically for Aboriginal people with guardianship orders. Both tools support staff to ascertain the wishes of clients. These projects are discussed in more detail later and information and resources are available on the [OPA website](#).

In 2024, the OPA established a [Strategic Plan 2024-2027](#). The plan aims to promote quality decision-making and systemic advocacy that enhances and protects the dignity, safety and rights of all South Australian adults with impaired decision-making ability. Supporting people with a guardianship order entails serious responsibilities to ensure they are safe and least restrictive decisions are made, whilst also promoting and supporting a person’s human rights.

I thank the staff at the Office of the Public Advocate for their professionalism, dedication and commitment in working to assist the people we support.

My office produces a quarterly newsletter, which outlines the activities of the OPA and current and emerging issues. I encourage you to subscribe to this newsletter, which you can do [here](#) or by contacting the office.

# 2023-24 Snapshot

*A quick look at our achievements this past year*



## Guardianship Clients

- 609** new clients
- 2,513** clients assisted during the year
- 2,152** active clients on 30 June 2024
- 68%** of active clients had a NDIS plan
- 361** files closed
- 1,424** client visits conducted to check wellbeing, accommodation, services



## Systemic Advocacy

- 7** written submissions from the Public Advocate



## Dispute Resolution

- 45** new dispute resolution applications
- 44** finalised dispute resolution applications



## Information Service

- 1,919** queries to the OPA Information Service



## Education Services

- 53** information sessions delivered
- 1139** people attended an education session



# Functions of the Public Advocate

*The Public Advocate aims to promote and safeguard the rights and interests of people with impaired decision-making ability.*

## Purpose and role

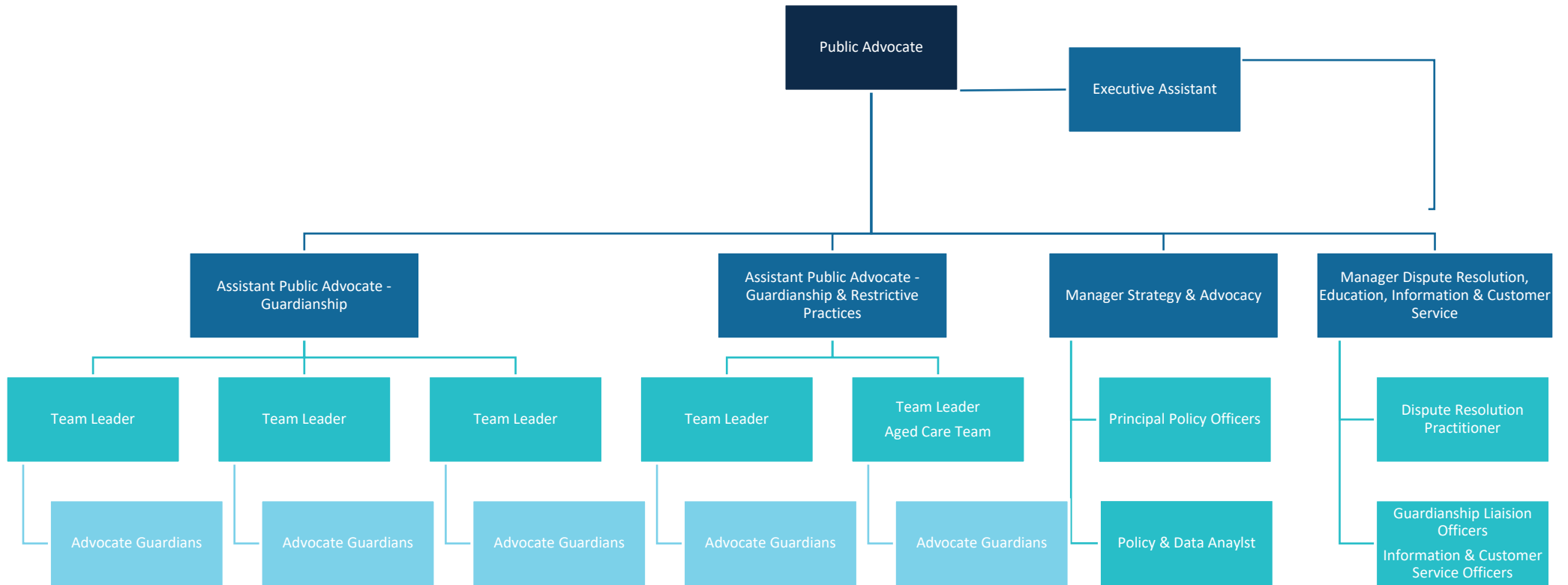
The Public Advocate is appointed under the [Guardianship and Administration Act 1993](#) (SA) to provide services that promote and protect the rights of people with a mental incapacity.

The [Advance Care Directives Act 2013](#) (SA) and the [Consent to Medical Treatment and Palliative Care Act 1995](#) (SA) also authorise the Public Advocate to provide dispute resolution in relation to advance care directives and consent to medical treatment.

In fulfilling these statutory obligations, the Public Advocate also:

- reviews programs for people with impaired decision-making ability and makes recommendations to the appropriate minister about unmet need or inappropriately met need
- promotes the rights and interests of people with impaired decision-making ability through systemic and individual advocacy
- provides information to the community about informal arrangements, guardianship and administration, advance care directives, Powers of Attorney, informal arrangements and related issues
- undertakes investigations as required by the SACAT and acts as a guardian when appointed by the SACAT when there is no other suitable person to assist with decision-making.

# Organisational chart



## Key services

The OPA works with and on behalf of adults with impaired decision-making ability to provide the following services:

### Guardianship (decision-making)

Where there is no other appropriate person, the SACAT may appoint the Public Advocate as the guardian for a person with impaired decision-making ability to make decisions about accommodation, health or access to services and other people.

### Investigating

The SACAT can direct the Public Advocate to investigate the affairs of a person who is the subject of an application for guardianship and/or administration, or who has had an advance care directive revoked by the SACAT. The Public Advocate provides a report to assist the SACAT to determine the next steps for a person to ensure their safety and well-being.

### Resolving and mediating

The Public Advocate is authorised to resolve disputes regarding health, accommodation and lifestyle decisions, and helps people work through disagreements.

### Informing

The Public Advocate provides information to the South Australian community including members of the public, service providers and professionals, about issues that are, or could be, affecting a person with impaired decision-making ability.

### Advocating and promoting rights

The Public Advocate undertakes individual advocacy for clients (and some other individuals) as well as systemic advocacy. The Public Advocate can make recommendations to ministers for legislative and/or operational change.

# Key issues and reform

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

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) reported its findings to the Governor-General on 28 September 2023. The final report was officially released on 29 October 2023 and contained 12 volumes with 222 recommendations. Of those recommendations, 44 require response from the South Australian government, 85 have joint responsibility across the Australian Government and other states and territory governments, and 93 are the responsibility of the Australian Government, other states and territories only, or non-government entities<sup>1</sup>.

On 31 July 2024, South Australia responded to 129 of the recommendations. If adopted by states and territories, some of these recommendations could significantly influence guardianship legislation and practices across the country. Anticipated changes might include updates to terminology, the introduction of a new supported decision-making framework and principles, the appointment of support roles rather than a guardian, guidelines to enhance participation in tribunal proceedings, and revisions to public disclosure and confidentiality rules concerning information identifying the parties involved in proceedings.

The Royal Commission's final report can be found on its [website](#).

## Public Advocate clients and the criminal justice system

Public Advocate clients remain disproportionately represented in the criminal justice system, both as victims and defendants. Clients with disabilities, mental health conditions, or complex behavioural matters continue to face troublingly high rates of involvement in criminal proceedings. Over the past year, amid the housing and cost-of-living crisis, there has been a disturbing rise in the number of younger clients with psychosocial disabilities entering the criminal justice system. These clients often receive inadequate NDIS funding, are frequently excluded from public and community housing, do not qualify for mental health support services, and are barred from voluntary community support programs. Consequently, they repeatedly fall through the gaps of a fragmented system.

In response to this trend, the OPA has strengthened key relationships with South Australia Police (SAPOL), the Department for Correctional Services (DCS), Forensic Mental Health Services, Legal Services Commission (LSC), and the Aboriginal Legal Rights Movement (ALRM). These relationships help the Public Advocate to support clients who are involved in the criminal justice system.

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<sup>1</sup> [SA response to the Royal Commission](#)

Additionally, the OPA seeks legal assistance and advice for clients charged with offences under the criminal law in relation to Part 8A - Mental Impairment of the [Criminal Law Consolidation Act 1935 \(SA\)](#).

The Public Advocate continues to advocate for improvements to the Communication Partner Scheme and to legislation supporting vulnerable victims of crime with intellectual disabilities and impaired decision-making ability. These relate to giving statements and providing testimony in criminal court proceedings. A review of the *Statutes Amendment (Vulnerable Witnesses) Act 2015, (SA)* is timely as it has been in operation since August 2015.

The State Disability Inclusion Plan should incorporate a Disability Justice Strategy, created in collaboration with people with disabilities, to enhance justice responses for this population. This strategy should aim to address the systemic barriers that individuals with disabilities encounter when accessing the justice system.

### Missing Person Reporting to South Australian Police

Public Advocate clients can leave community support and care settings and become missing persons. These clients often have complex behavioural and psycho-social needs and are highly mobile in the community. They fail to return to safe care environments and are potentially subject to abuse and exploitation by others.

In 2023-24, the Public Advocate received 180 missing person notifications for 87 clients, who were reported to SAPOL as missing, with the majority located within 1-2 days.

SAPOL has powers under s32(4 and 6-7) of the [Guardianship and Administration Act 1993 \(SA\)](#) to locate clients at risk in the community and return them to safe environments.

### Forensic Mental Health (FMH) services

People with disability are among the most vulnerable in a system that criminalises behaviours resulting from their disability. Public Advocate clients continue to be over-represented in Forensic Mental Health (FMH) Services. Many are detained under Forensic Court Orders or are awaiting release on licence before the criminal courts.

The limited availability of FMH beds, and the poor condition of some ageing and inappropriate FMH facilities in the State, continues to create tensions across the health and correctional services systems. Shortages in FMH beds results in acute mental health patients waiting in emergency departments or being diverted to prisons and correctional facilities. James Nash House requires urgent refurbishment or replacement and this poor infrastructure affects staff and clinicians' ability to safely manage patients in those settings. The Tarnanthi Disability Forensic Service requires relocation from the Glenside campus and new suitable accommodation for long stay patients.

The Public Advocate is guardian to several high-risk young women who came before the FMH system during the year, who could not be safely accommodated in current FMH facilities. As an alternative they have been accommodated in prison which is not appropriate for acutely unwell forensic mental health patients. Clients often cycle through the custodial and forensic mental health services.

The Public Advocate also participated in several critical case meetings with the Chief Psychiatrist and Chief Executive Officer of the Department for Correctional Services where the suitability of accommodations for FMH Public Advocate clients was investigated. The Chief Psychiatrist, using authority delegated from the Minister of Health, gave directions on the custody and supervision of care of forensic patients. Pursuant to s269(V)(2) of the [Criminal Law Consolidation Act 1935](#), this has required forensic clients with guardianship orders to be placed in mainstream custodial settings when there is “no practical alternative”. In such circumstances, the Public Advocate has been appropriately consulted, however these situations are not ideal or suitable for the longer term or the health and wellbeing of clients.

## Restrictive practices

Restrictive practices are measures that limit a person’s rights and freedom of movement in order to reduce the risk of physical harm to themselves or others due to their behaviour. These practices must only be used as a last resort for people with impaired decision-making ability, after alternative methods to mitigate the risk of harm have been exhausted.

Where it is not possible to eliminate restrictive practices, the Public Advocate advocates for their minimal use. The authorisation processes for restrictive practices vary between NDIS participants and people in aged care settings and are detailed below.

### Restrictive practices for NDIS participants

On 30 May 2022, the [Disability Inclusion Act 2018 \(SA\)](#) introduced a new authorisation scheme to regulate the use of restrictive practices for people receiving NDIS services in South Australia.

Under this scheme, NDIS service providers who have an Authorised Program Officer (APO) can authorise certain restrictive practices, while a Senior Authorising Officer (SAO) within the Department for Human Services, Restrictive Practices Unit (DHS RPU), authorises more serious restrictive practices. The scheme does not extend to ‘detention orders’, which the SACAT continues to authorise under the [Guardianship and Administration Act 1993 \(SA\)](#).

Although the Public Advocate no longer authorises restrictive practices for clients who are NDIS participants, the PA’s role remains significant. This includes consultation on their use and the power to seek reviews of decisions made by NDIS providers and the Senior Authorising Officer.

In 2024, the OPA signed a data sharing agreement with the DHS RPU to formalise information exchange and enable better oversight and safeguarding of Public Advocate clients who are subject to restrictive practices.

In March 2024, the Public Advocate attended, and was a member of the panel discussion on Safeguarding, at the 'Human Rights at our Doorstep' Conference. There was a strong focus on safeguarding, and on reducing restrictive practices and eliminating them where possible. A highlight was when a Public Advocate client shared her experiences and how they prefer to be supported (see below).

### **Support in action**

A Public Advocate client presented at the 'Human rights at our Doorstep Conference 2024'. The conference was convened by the Department of Human Services, Restrictive Practices Unit, at the Hilton Hotel and attended by approximately 300 disability support providers from across the sector. They shared their own personal story about what is important to them. You can hear their story [here](#).

### **Restrictive practices in residential aged care facilities (RACFs)**

In January 2024, the Public Advocate raised concerns about the absence of regulations for restrictive practices under the proposed new Aged Care Act, through a submission to the Department of Health and Aged Care. The new act has been delayed and is expected to commence on 1 July 2025.

While the Act will provide the requirement to authorise restrictive practices, the Rules will provide the necessary details for the practical operation of any scheme. The Rules, which are yet to be drafted, will be based on the [\*Aged Care Act 1997, Quality of Care Amendment \(Restrictive Practices\) Principles 2022\*](#) (Cth).

The Public Advocate continues to consent to the use of restrictive practices in RACFs, in consultation with care providers and general practitioners. The use of chemical restraint is reportedly the most common form of restrictive practice in RACFs. However, this information may be inaccurate as, unlike the NDIS, there is no central authorising body for the use of restrictive practices in aged care. Additionally, substitute decision makers and persons responsible are empowered to consent to chemical restraints under the [\*Consent to Medical Treatment and Palliative Care Act 1995\*](#) (SA), and this data is not collected. The Public Advocate supports the establishment of an authorisation scheme for the aged care sector, similar to that for NDIS participants, to allow for oversight and regulation of the use of restrictive practices for older South Australians.

The legislative frameworks for authorising and regulating restrictive practices in the NDIS and aged care sectors should be aligned. This will ensure consistent practices and understanding across both sectors, recognising that individuals and support staff often transition between them.

## Family and domestic violence

The Public Advocate continues to convene the *Public Advocate Clients and Domestic Violence Working Group*, with across-government collaboration to address issues for 'at-risk' clients. These clients are socially mobile and find themselves in situations which place them at risk of abuse, violence, and exploitation (including sexual exploitation).

Working group membership includes representatives from State and Commonwealth government agencies, the non-government sector in the human services, disability, and domestic violence areas. The purpose of the working group is to share information, which assists the Public Advocate in systemic advocacy for these clients. The working group continues to address recommendations from the *Domestic Family Violence and Exploitation – Findings of the Public Advocate* report. This has resulted in better information-sharing between agencies about clients who may present to a range of services. It has also led to improved training opportunities, awareness of available services, and identification of areas where further advocacy is required.

The working group supports the government's commitment to the Royal Commission inquiring into domestic, family, and sexual violence in South Australia.

## Housing

Access to safe, suitable, affordable, and stable housing continues to be a significant issue for clients. Some challenges are unique to NDIS participants and are discussed later in this report.

Clients continue to be evicted from or fail to have leases renewed in public and community housing at concerning rates. Insecure and inappropriate private rental arrangements leave some of the most vulnerable clients exposed to market-based rents and without the safety of a secure tenancy. They also pay up to 80% of their Disability Support Pension for living costs resulting in little disposal income (after-market rent and living costs).

The OPA, through various forums and groups, is working to improve housing options and security for clients. The Public Advocate continues to convene the *Housing and Homelessness Operational Working Group* with representatives from the South Australian Housing Trust (SAHT), Department of Health and Wellbeing, Department of Human Services

(DHS), Department of Correctional Services (DCS), Forensic Mental Health Service, National Disability Insurance Scheme (NDIS), and Toward Home Alliance.

This is an across-agency collaboration to support clients who are homeless, or at imminent risk of homelessness, to locate accommodation when all other avenues have been tried and exhausted.

The OPA has engaged with Specialist Disability Accommodation (SDA) providers and property developers to facilitate new build properties for OPA clients with high physical support and robust SDA allocations in their NDIS plans. This involved the OPA collaborating with the Crown Solicitor's Office to progress development agreements and commercial contracting principles. This will assist in addressing the specific housing needs of some Public Advocate clients who, due to property damaging behaviours, require robust housing. Numerous clients have been identified for this individualised SDA housing. However, new construction of properties for clients takes up to two years to achieve and clients often require interim high cost private rental accommodation in the meantime.

### **Non-acute hospital admissions**

The South Australian hospital sector is under severe pressure, leading to extended hospital stays for Public Advocate clients. Social admissions have become a last resort to protect vulnerable individuals. The Public Advocate worked to prevent unnecessary hospital admissions and to expedite discharge through collaboration with the Commonwealth, State, and non-government sectors.

Since the NDIS began, providers have occasionally relinquished care for Public Advocate clients with non-acute issues, due to client complexity and NDIS funding being exhausted. This has increased notably in the past six months. The Public Advocate, in partnership with service providers, the NDIA, the NDIS Quality and Safeguards Commission, and the Department for Health and Wellbeing, is focused on maintaining community-based services and advocating for trauma-responsive care for clients frequently hospitalised for non-acute issues and to prevent future hospitalisation.

### **Young people transitioning from Child Protection to adult guardianship**

During 2023-24, 37 young people transitioned from guardianship of the Chief Executive of the Department for Child Protection (DCP) to adult guardianship with the Public Advocate, representing 6% of all guardianship appointments during the financial year.

Senior OPA staff meet regularly with dedicated DCP staff about clients with impaired decision-making ability who are approaching adulthood. The OPA engages with DCP staff up to three months before a young person transitions to adult guardianship, and DCP staff

remain engaged with OPA staff for up to three months post transition. This allows for a smooth and integrated transition process.

In 2024, the Public Advocate signed a Memorandum of Understanding and Intragovernmental Data Sharing Agreement with the Chief Executive of the Department for Child Protection to enable better information exchange to support young people in this transition.

**A positive outcome of collaboration**

An 18-year-old client with autism successfully transitioned from the DCP to share a new home with another former DCP person with similar disabilities. This client is very sociable but unable to express themselves verbally. There have been positive reports that both people are enjoying each other's company and activities, such as visiting the beach, having coffees and other social outings. The OPA is aware of the trauma that clients can experience with change however significant planning went into supporting this move, and the results have created a positive relationship for both people.



# Decision-making

## Guardianship

The Public Advocate is appointed by the SACAT as a guardian for a person who has impaired decision-making ability where there is no other suitable person in their life to assist them with decision-making. The Public Advocate delegates the day-to-day decision-making responsibility to staff within the OPA. The person with guardianship orders appointing the Public Advocate is known under the [Guardianship and Administration Act 1993 \(SA\)](#) as the 'protected person'.

Decisions may include:

- **accommodation** decisions about the appropriateness of current living arrangements and/or suitable alternative accommodation options
- **health** decisions about healthcare needs, preferred treatment options, consent to medical or dental treatment, consent to palliative care approaches and/or withdrawal of treatment under certain circumstances
- **lifestyle** decisions about social activities, education or employment
- **access** decisions about a protected person's contact with other people.

## Client profile

The Public Advocate was guardian for 2,152 clients on 30 June 2024.

- **Gender identity**<sup>2</sup>: 1,199 clients (56%) were male, 951 (44%) were female, and 2 were non-binary
- **NDIS participants**: 1,473 clients (68%) had a NDIS plan
- **Age**: 791 clients (37%) were 65-years-of-age or older and 1,361 (63%) were under 65
- **First Nations People**: 240 clients (11%) identified as Aboriginal

Aboriginal people are over-represented in public guardianship in South Australia, comprising 11% of clients but only 2.4 % of the population<sup>3</sup>.

## Age

56 years was the median age for clients with active guardianship orders on 30 June 2024, which is higher than the median of 49 for all South Australians aged 18 years or older<sup>4</sup>.

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<sup>2</sup> The Public Advocate is seeking enhancements to the client information recording system to enable non-binary gender information recording

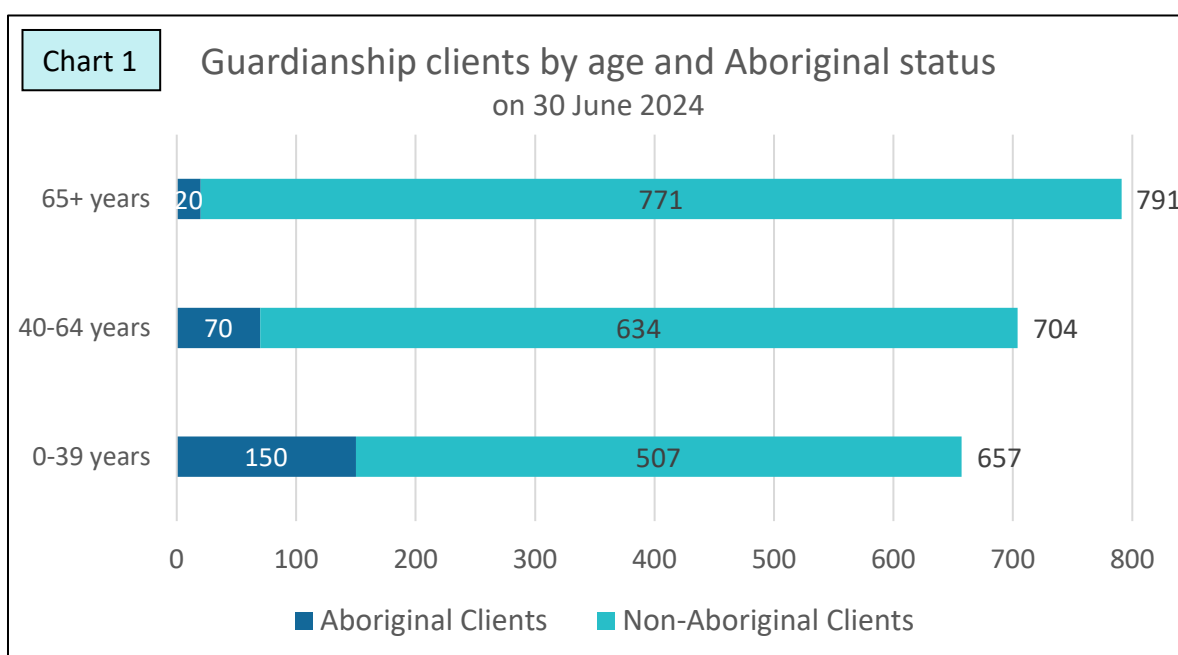
<sup>3</sup> 2021 census of population and housing (Australian Bureau of Statistics: [link](#))

<sup>4</sup> Australian Bureau of Statistics, 2021 Census DataPack for South Australia ([link](#))

**Table 1: clients by age and Aboriginal status on 30 June 2024**

	All Clients		Aboriginal Clients	Non-Aboriginal Clients
65+ years	791 (36.8%)	65+ years	20 (2.5%)	771 (97.5%)
40-64 years	704 (32.7%)	40-64 years	70 (9.9%)	634 (90.1%)
0-39 years	657 (30.5%)	0-39 years	150 (22.8%)	507 (77.2%)

Aboriginal people are further over-represented among clients under public guardianship who are under 40 years-of-age (22.8%). Over-representation drops significantly as age increases, reflecting the lower life expectancy of Aboriginal people.

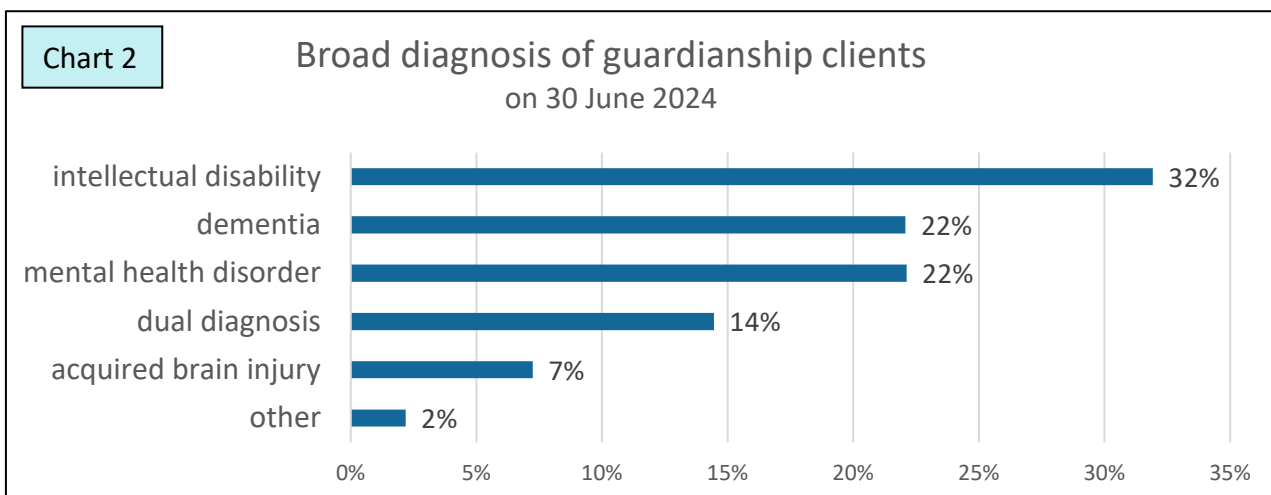


## Diagnoses

Of the clients with active guardianship orders as of 30 June 2024, 76.1% were diagnosed with a decision-making impairment falling within three primary categories:

- intellectual disability (31.9%)
- dementia (22.1%)
- or mental illness (22.1%).

The majority of the remaining 23.9% of guardianship clients were diagnosed with multiple impairments that include the three primary categories.

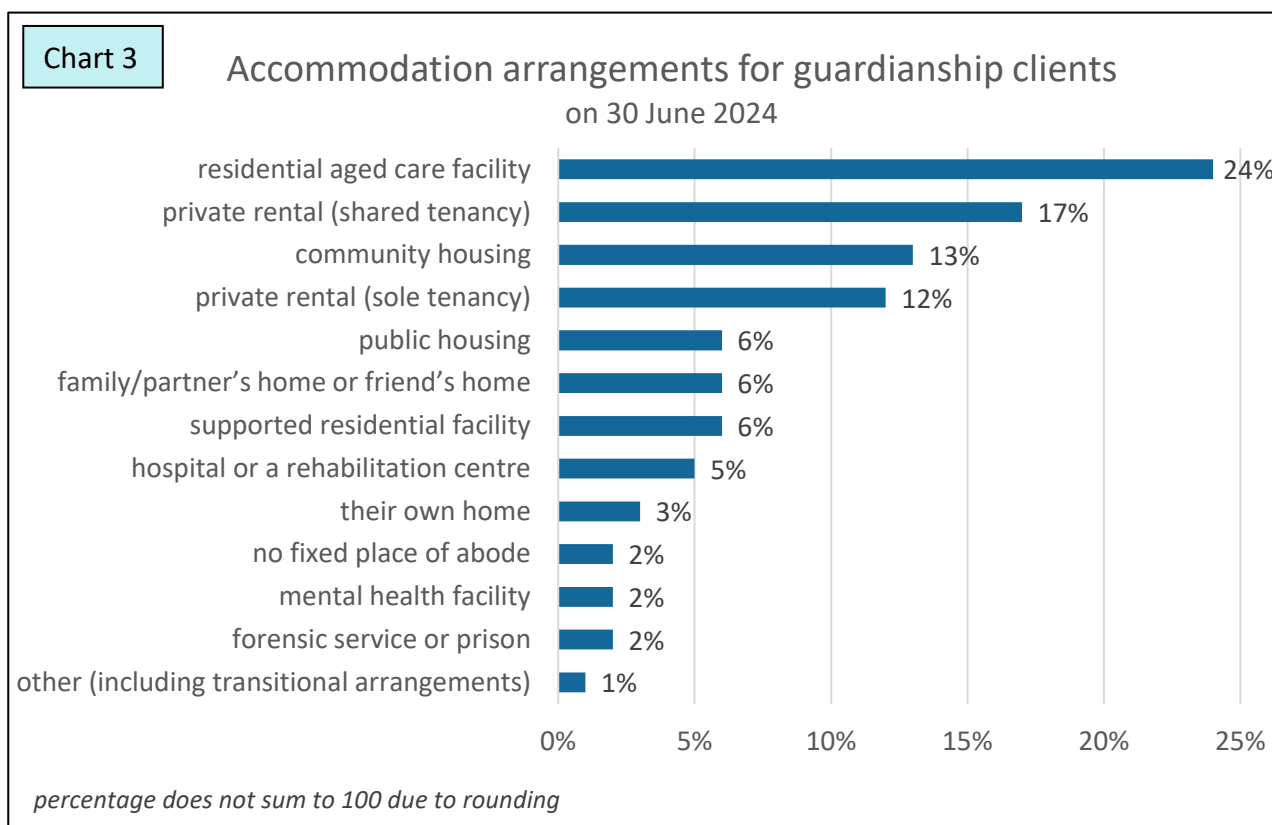


Aboriginal clients followed a similar diagnostic profile with two significant exceptions:

- lower rate of dementia (7.1% for Aboriginal clients), likely reflecting the lower life expectancy of Aboriginal people
- higher rate of intellectual disability (42.1% for Aboriginal clients).

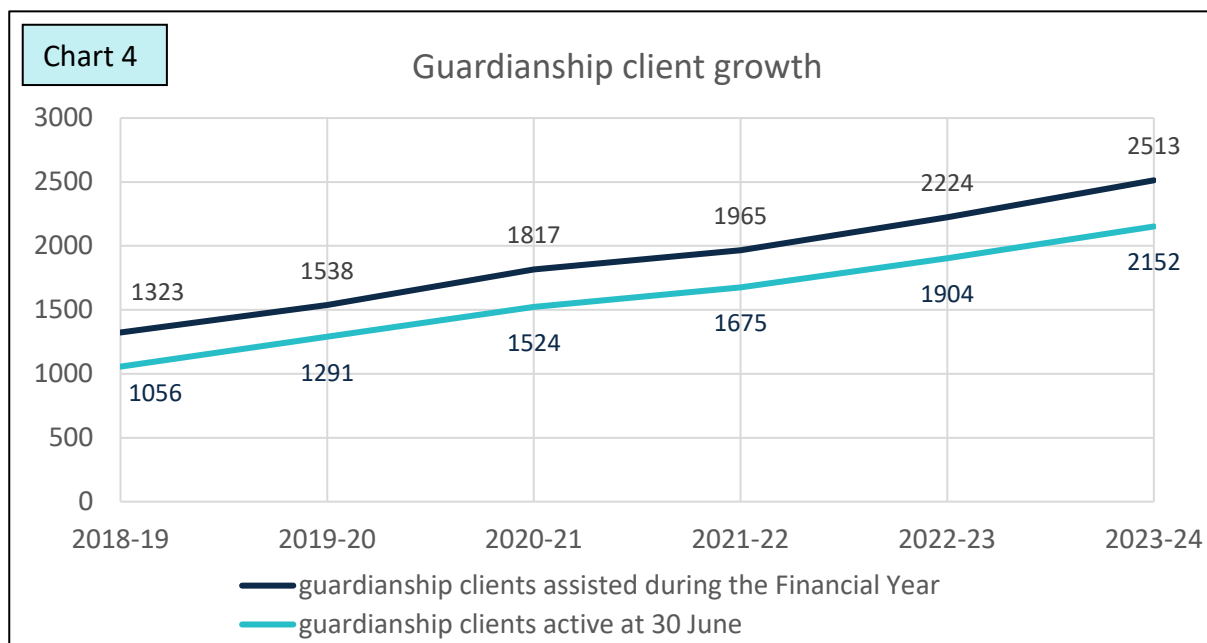
### Accommodation

Most clients with guardianship orders appointing the Public Advocate reside in disability-specific accommodation, including supported single-living arrangements and groups homes, or RACFs.



## Growth in guardianship

The number of people with guardianship orders appointing the Public Advocate is increasing at a growing rate and rose 13% (from 1,904 to 2,152) during the 2023-24 financial year.



Guardianship client numbers have increased by 104% over the past five years, rising from 1,056 in June 2019 to 2,152 in June 2024.

The increase in appointments reflects the impact of:

- an increased number of older people affected by dementia or stroke
- the implementation of the NDIS
- changes to the regulation of restrictive practices in disability and aged care sectors
- the Full Court of the Supreme Court of South Australia's decision<sup>5</sup> in May 2019 regarding the detention of people in RACF or disability-specific accommodation, and the subsequent reduced capacity for revocation of guardianship orders where the Public Advocate's role as guardian has otherwise ceased in terms of regular decision-making.

<sup>5</sup> The Public Advocate v C, B [2019] SASFC 58

## New appointments

Where possible, the OPA attends initial SACAT hearings for guardianship applications that nominate the Public Advocate as guardian, or where SACAT considers it likely that the Public Advocate will be appointed and invites the OPA to attend.

During 2023-24:

- SACAT held 894 initial hearings of guardianship applications where the Public Advocate was nominated or considered likely to be appointed
  - applications increased by 21% compared with the previous financial year
- the Public Advocate was appointed as guardian for 609 people (68%) with impaired decision-making ability
  - appointments increased by 11% compared with the previous year<sup>6</sup>.

	2022–23	2023-24	% ↑/↓
SACAT hearings for guardianship applications <sup>^</sup>	740	894	↑21%
New guardianship appointments <sup>^^</sup>	549	609	↑11%

<sup>^</sup> where the Public Advocate is nominated or considered likely to be appointed

<sup>^^</sup> where the Public Advocate is appointed guardian

## Closed matters

The OPA closed 361 guardianship matters during 2023-24, representing 14% of all guardianship matters that were active at any point. New appointments (609) exceeded matter closures by 248.

Matters are closed for a number of reasons, including:

- clients passing away (46%)
- SACAT revoking guardianship orders (16%)
- appointment of a private guardian (13%)
- guardianship orders expiring (11%)
- SACAT dismissal of urgent temporary guardianship orders (11%).

The OPA seeks revocation of guardianship orders through SACAT if there is no longer a role for the Public Advocate as guardian.

Certain orders and circumstances require the Public Advocate to play an ongoing role as guardian, including:

- for people who are NDIS participants, because NDIS plans and services are regularly reviewed and changed, and a guardian must make NDIS-related decisions

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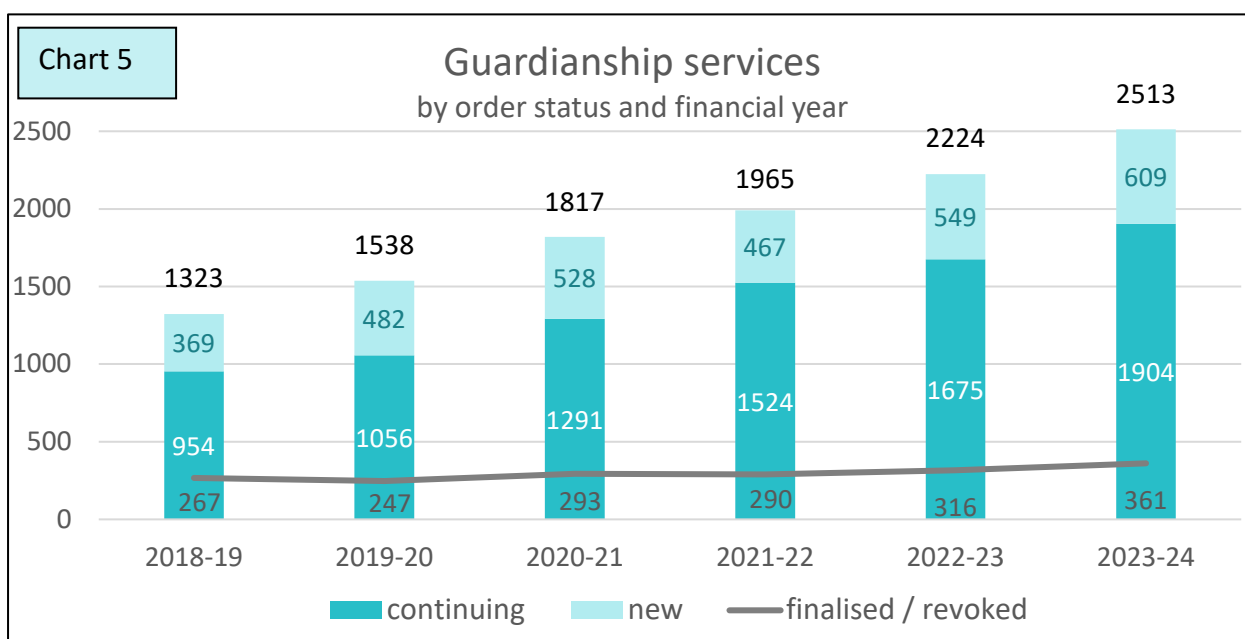
<sup>6</sup> The increase in appointments (or new guardianship orders) differs from the increase in client numbers, detailed in the previous section

- people for whom restrictive practices are in place as their use is regularly reviewed. While the use of restrictive practices can sometimes be eliminated or reduced over time, the need for detention orders for people who are living in ‘closed’ facilities or accommodation (where the person is not permitted to leave the location at will, particularly for their own safety) will usually remain.

Of the 361 guardianship matters that were closed in 2023-24, 84 matters (23%) were in place for over three years, and 191 matters (53%) were in place for less than one year.

**Table 3: Length of closed guardianship matters 2023-24**

Length of guardianship matter	2022–23 <sup>7</sup>	2023-24
0 – < 12 months	149	191
1 year – < 2 years	63	42
2 – < 3 years	36	44
3+ years	68	84
<b>Total closed matters</b>	<b>316</b>	<b>361</b>



### Further information on guardianship

Further information about guardianship can be found on the [OPA website](#) in [fact sheets](#). Five-year data can be found at [Data SA](#).

<sup>7</sup> Data recording enhancements during 2022-23 identified discrepancies in reporting that resulted in some double counting of decisions in previous Annual Reports.

# Decisions

A key role of the Public Advocate is to make decisions for people with impaired decision-making ability where no other appropriate person can be appointed as guardian. These decisions relate to health care, accommodation, services and supports and lifestyle.

In 2023-24, the Public Advocate and OPA staff made the following decisions for people with guardianship orders:

**Table 4: Decisions made for guardianship clients during 2023-24**

Decisions	2022-23	2023-24	% ↑/↓
Health care	1,917	2,240	↑17%
Accommodation	1,199	1,459	↑22%
Service / support	771	1,123	↑46%
Lifestyle	649	525	↓19%
Access	561	592	↑6%
Other <sup>8</sup>	0	179	-
<b>Total decisions</b>	<b>5,097</b>	<b>6,118</b>	<b>↑20%</b>

The notable rise in “service/support” decisions can be attributed partly to changes in recording practices, specifically with NDIS service agreements, and the resulting decrease in “lifestyle” decisions.

## After-hours decision-making

The OPA provides an after-hours service for urgent decisions on weekdays, and a 24-hour service on weekends and public holidays. This is a limited service, primarily to assist with urgent medical or emergency decision-making. These calls may require an application to the SACAT for orders.

In 2023-24, the OPA responded to 1,996 after-hours calls, an increase of 711 calls (55% increase) from the previous year, with a monthly average of 166 after-hours calls. The peak call periods were 5pm to 9pm on weekdays, and 9am to 6pm on weekends and public holidays.

During 2023-24, the OPA made 520 urgent after-hours decisions for clients, a rate of one decision for every four calls (26%). A significant majority of decisions were health related (420 or 81% of decisions).

<sup>8</sup> Category “other” includes legal decisions and decisions to apply for SACAT orders

Calls that did not require an urgent decision were either a notification of a serious matter to the Public Advocate (118 or 6% of all calls), an out-of-hours SACAT hearing (74 or 4% of all calls) or were not appropriate for the after-hours service (1,284 or 64% of all calls). More than half of calls received after-hours did not require urgent decision-making or notification and should have been made during regular business hours. The OPA continues to educate callers that the after-hours service is for urgent matters only.

## Investigations

The SACAT can direct the Public Advocate to investigate and provide a written report advising whether guardianship or administration orders are required and if so, who the most appropriate guardian/administrator is. The report provides a balanced, concise overview of the circumstances of the person subject to the application.

Public Advocate staff are responsible for these investigations, which involve interviewing the person who is the subject of the investigation, as well as other interested parties. The types of issues that the OPA investigates include matters relating to:

- need for guardianship and/or administration orders
- accommodation
- access
- health
- finances
- the appropriateness of sterilisation
- the appropriateness of individuals to act as private guardians.

Investigation reports are presented at SACAT hearings and considered along with other evidence. The number of investigations undertaken in 2023-24 was similar to the previous year.

**Table 5: Investigations for the SACAT in 2023-24**

Investigations	2022-23	2023-24
New investigations undertaken for the SACAT	23	17
Active at end of financial year	14	9

## Litigation guardianship

A court may appoint the Public Advocate as Litigation Guardian for individuals with impaired decision-making ability where their legal representative is unable to obtain instructions from them. The Litigation Guardian reviews legal advice, consults the person, provides instructions to the lawyer and supports the person in understanding proceedings. In some cases, the Public Advocate may give substitute instructions based on legal advice.

In July 2023, the Attorney-General's Department (AGD) funded the Uniting Communities Law Centre (UCLC) to provide litigation guardianship services for matters in the youth court. The Public Advocate has referred one request to UCLC when not the appointed guardian.

The Public Advocate continues to accept requests for litigation guardianship from the Youth Court where it is the appointed guardian. The OPA received 17 requests for litigation guardianship and accepted eight appointments, which is one more than the previous year. Remaining requests were either resolved or outside the OPA's jurisdiction.

In 2023-24, the OPA provided litigation guardianship services for 11 people (three ongoing, eight new), six of whom had an active public guardianship order.

**Table 6: Litigation Guardianship 2023-24**

Litigation guardianship	2022-23	2023-24
Requests for Litigation Guardian during the financial year	11	17
Litigation guardianship appointments during the financial year	7	8
Active at end of financial year	3	1

## Complaints and decision review requests

In 2023-24, the OPA addressed 62 complaints or decision reviews and 19 ministerial enquiries. These issues involved OPA staff decisions, communication concerns, or conflict among parties. There were no Freedom of Information applications. The OPA is an exempt agency (in respect of certain functions) under the [\*Freedom of Information \(Exempt Agencies\) Regulations 2023\*](#) (SA).

Complaints and decision review requests concerned only 2.5% of the 2,513 clients assisted during the year. Ministerial enquiries concerned only 0.8% of clients.

**Table 7: Complaints and decision review requests 2023-24**

Complaints and decision review requests	2022-23	2023-24
Complaints and decision reviews	42	62
Ministerial enquiries	16	19
Freedom of Information requests	1	0

## Warrants

A warrant is a written authority by the SACAT under section 69 of the [Guardianship and Administration Act 1993 \(SA\)](#) requiring a person to undergo a mental capacity assessment by a psychiatric, psychological or medical professional who submit a report to the SACAT.

No applications for warrants were made in 2023-24.



# Resolving and mediating

## Dispute resolution

The OPA Dispute Resolution Service (DRS) has authority under the [Advance Care Directives Act 2013 \(SA\)](#) and the [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#) to resolve disputes. It employs qualified mediators who are trained in mediation and complex conflict resolution.

The Public Advocate can offer assistance or mediate in:

- disputes over Advance Care Directives (ACD) under the [Advance Care Directives Act 2013 \(SA\)](#)
- disputes about consent to medical or dental treatment, including for children under 16, under the [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#)
- disputes about decisions or decision-maker under both Acts.

An eligible person is someone who demonstrates a proper interest in the matter related to the Advance Care Directive or the consent to treatment.

## Advance Care Directives

The [Advance Care Directives Act 2013 \(SA\)](#) allows adults over 18 with decision-making ability to create an ACD outlining their wishes for future healthcare, living arrangements and personal matters if they become unable to decide or communicate. It does not cover financial matters. The Act also permits the appointment of substitute decision-makers who must act according to the ACD's preferences and values.

Following a 2019 review, the South Australian Government established the Advance Care Planning Oversight Group, which includes the Public Advocate. The group advised on the Advance Care Directives (Review) Amendment Bill 2022, passed 30 November 2023 which includes:

- enhanced interpreter requirements of non-English speakers
- clarifying ACD effects in cases of suspected suicide or self-harm
- recognition of digital ACD copies as valid
- empowerment of substitute decision-makers to make decisions collectively or separately and appointing them in order of precedence.

The group also redesigned the Advance Care Directives form and kit for clarity and ease of use.

The review highlighted the low uptake of Advance Care Directives. In response, the OPA in collaboration with Office for Ageing Well (OAW), launched the ‘Substitute Decision-Maker Toolkit Project’ which is now featured on the OPA website and is used at information sessions. Details of the project and toolkit are covered under “Innovation” in this report.

Additionally, the Public Advocate participates in the ‘ACD and End of Life Collaborative Projects Forum’, led by OAW in DHS which connects local councils and OAW-funded organisations to share insights and implement review recommendations.

More information about advance care planning and directives is available on the [OPA website](#).

## Consent to Medical Treatment and Palliative Care Act 1995

A person who cannot consent to medical or dental treatment needs valid consent from an authorised person, as outlined in the [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#) (the Consent Act). This Act also authorises the Public Advocate to resolve consent disputes.

When a person cannot consent, approval must come from either a substitute decision-maker under an ACD, or if none are available, a ‘person responsible’ as defined in section 14 of the Consent Act, who must be available and willing to decide, in the following hierarchical order:

1. a guardian appointed by the SACAT to make healthcare decisions.
2. a ‘prescribed relative’, who is a spouse/domestic partner/relative by blood or marriage, or an adult related to the person by blood, marriage, adoption or Aboriginal kinship/marriage, with a close and continuing relationship with the person.
3. an adult friend who has a close and continuing relationship with the person
4. someone charged with the person’s ongoing day-to-day care and well-being (such as a Director of Care in aged or supported care, except for chemical restraint).

The Consent Act often eliminates the need for the SACAT to make a guardianship order for healthcare. In 2023/24, the OPA received no formal dispute resolution applications under the Consent Act but handled many related issues informally at first contact. The OPA Information Service fielded 110 calls about the Consent Act and/or Prescribed Treatment.

A prescribed treatment is a category of treatment that has been identified as requiring special consideration before being undertaken. The [Mental Health Act 2009 \(SA\)](#) currently defines electro-convulsive therapy and neurosurgery for mental illness as prescribed treatment. Special *consent* provisions apply for these procedures. Other treatments may be determined to be prescribed treatment by government regulation.

Prescribed treatments under the [Guardianship and Administration Act 1993 \(SA\)](#) are sterilisation and termination of pregnancy for people with a mental incapacity.<sup>9</sup>

### Dispute Resolution Service (DRS) applications

The DRS handles dispute resolution for issues arising from ACDs such as preventing visits, disagreements about living arrangements, and concerns about substitute decision-makers.

The DRS helps families resolve conflict and repair relationships, encouraging families to avoid formal SACAT processes that could lead to revoking substitute decision-makers.

In 2023-24, 55 of the 56 cases involved individuals over the age of 65 years with an average age of 84.

Applications mainly come from family and friends, but also from health care professionals, social workers and service providers, as well as referrals from the SACAT under section 49 of the [Advance Care Directives Act 2013 \(SA\)](#).

### Service model for dispute resolution and conflict management

The DRS model addresses disputes involving a high level of conflict through:

- preliminary assistance
- mediation

All OPA's qualified mediators have undertaken national elder mediation<sup>10</sup> and family dispute resolution training.

The DRS prioritises the rights and voice of the person at the centre of the dispute. The model based on State legislation ([Advance Care Directives Act 2013](#), [Consent to Medical Treatment and Palliative Care Act 1995](#)) and Commonwealth and International laws ([UN Convention on the Rights of Persons with Disabilities](#), [Disability Discrimination Act 1992 \(Cth\)](#)) integrates various dispute resolution and conflict management approaches.

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<sup>9</sup> [Prescribed Treatment \(lawhandbook.sa.gov.au\)](#)

<sup>10</sup> [Elder Mediation Australasian Network – Elder Mediation Australasian Network \(elder-mediation.com.au\)](#)

## Finalised DRS matters

**Table 8: DRS finalised matters 2023-24**

Finalised DRS matters	2022-23	2023-24
Resolved	20	14
No further action	10	18
Referred to the SACAT	6	3
Referred to Adult Safeguarding Unit	0	1
Application withdrawn	8	7
Client deceased	3	1
<b>Total</b>	<b>47</b>	<b>44</b>

In 2023-24 the DRS finalised 44 matters involving 144 parties.

No action was possible in 18 matters due to unwillingness to mediate, lack of response, or scope issues; one client passed away during the process.

Of the 14 cases resolved, 4 progressed to formal mediation and were resolved by agreement and 10 were resolved with preliminary assistance without the need for a written agreement.

Mediators use different mediation styles and approaches to assist parties in dispute, depending on the type of conflict. These include:

- Facilitative negotiated mediation— the mediator helps parties negotiate to reach their own solution.
- Narrative mediation—focuses on storytelling to separate individuals from issues and reshape narratives for better understanding and resolution.
- Transformative mediation— aims to empower parties to resolve their conflict by recognising each other's needs and interests.

The DRS primarily uses the facilitative approach but will adopt others as needed to address each family's unique requirements and uphold the vulnerable person's rights.

## Conflict coaching

Since 2020, the DRS has included conflict coaching in its service. This coaching helps individuals address interpersonal conflicts outside of a mediation by:

- gaining a fresh understanding of their conflict
- developing skills for difficult conversations and aligning with personal values
- exploring options for a preferred future.

Conflict coaching emphasises resolving underlying issues, de-escalating conflict, and improving communication with a focus on modelling respectful language and behaviour.

### Case study: Advance Care Directives

Paulo, an 86-year-old Italian speaking Australian lives alone in regional South Australia after his wife's death. He had his two daughters as joint substitute decision maker in his Advance Care Directive. His dementia had worsened, complicating communication, and his daughters disagreed on whether he should move to a RACF.

Facing conflict and allegations of neglect, Paulo's health and cognitive ability declined. The OPA DRS mediator visited Paulo with an interpreter, where Paulo expressed his wish to remain in his home and avoid conflict between his daughters.

The mediator conducted individual conflict coaching sessions, with each daughter and facilitated a mediation where Paulo's preferences were considered. The substitute decision makers ultimately reached a consensus, focusing on Paulo's needs and communicating respectfully.



# Informing

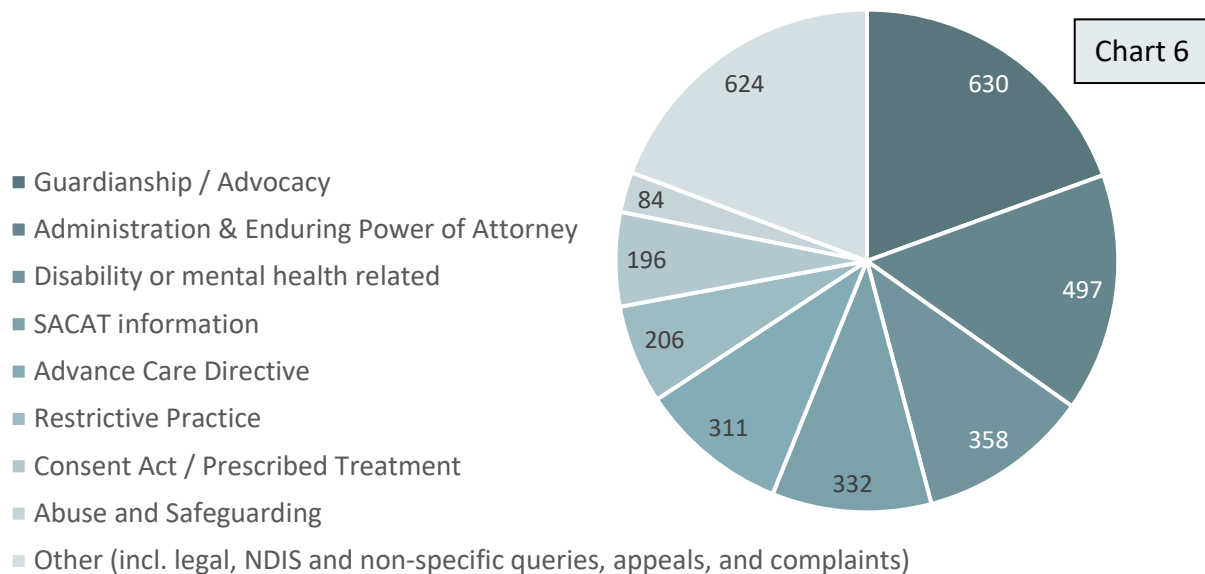
*The OPA provides information to community members, health professionals and service providers regarding adult safeguarding, the SACAT application process, decision-making ability, Guardianship and Administration orders and Advance Care Directives.*

Information is provided in three ways:

- consulting with the Information Officer by phone and email
- face-to-face [information sessions](#)
- the Office of the Public Advocate [website](#).

## Information Service statistics

In 2023-24, the OPA recorded 1,919 points of contact containing 3,238 requests<sup>11</sup> for information on a wide range of issues. The most frequent requests were about Guardianship and Advocacy (19%), Administration and Enduring Power of Attorney (15%), disability or mental health related (11%), and the role of SACAT (10%).



<sup>11</sup> points of contact often involve multiple queries on a range of subjects

## Information sessions

The OPA's Information Service assists South Australians by clarifying advance care planning documents, SACAT and the Public Advocate's role. It provides information sessions on the:

- [Guardianship and Administration Act 1993 \(SA\)](#)
- [Advance Care Directives Act 2013 \(SA\)](#)
- [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#).

**Table 9: Information sessions 2023-24**

Information session	2022-23	2023-24
Sessions requested	48	66
Sessions delivered	40	53
Participants	1,414	1,139

This year the Information Service has experienced an increase in requests for sessions.



# Advocacy and promoting rights

***The Public Advocate raises awareness about systemic issues that affect people with impaired decision-making ability.***

This involves highlighting issues affecting people who need help with decision-making, such as reforms in disability, mental health, aged care, and housing. Under section 21 (1) (a-h) of the [Guardianship and Administration Act 1993 \(SA\)](#), the Public Advocate makes recommendations to the Attorney-General, and relevant ministers, highlighting unmet needs and suggesting improvements of programs, legislation, systems, and processes.

## Systemic advocacy

In 2023-24, the Public Advocate continued to pursue systemic improvements in disability services for guardianship clients. Under Part 2 section 21 (3) of the [Guardianship and Administration Act 1993 \(SA\)](#), the Public Advocate can form committees to provide advice in relation to the performance of the Public Advocate's functions.

The Public Advocate convenes the OPA Disability Forum, Housing Operational Working Group and the Public Advocate Clients and Domestic Violence Working Group. These groups, comprising of representatives from government and non-government sectors collaborate to enhance service access for clients. These meetings address the complex needs of clients engaged with multiple service systems and aim to support some of South Australia's most vulnerable individuals.

Topics covered at these meetings included:

- information sharing and stakeholder updates
- NDIS challenges and market issues
- new initiatives
- case studies
- sector education
- housing and tenancy issues
- conflict of interest issues with single service providers, particularly in thin markets
- opportunities for collaboration.

## Written submissions

The Public Advocate makes submissions to proposed legislative and systemic changes affecting clients and, more generally, adults with impaired decision-making ability.

In 2023-24, the Public Advocate made the following submissions:

- Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1 Amendment Bill 2024 (Community Affairs Legislation Committee)
- NDIS General Issues Inquiry (Joint Standing Committee on the NDIS)
- Aged Care Bill 2023 Exposure Draft (Aged Care Legislative Reform Team)
- South Australia's Autism Strategy
- Disability Services and Inclusion Bill 2023 (Cth)
- Potential for a Human Rights Act in South Australia (Social Development Committee, SA Parliament)
- Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney (Attorney-General's department Cth)

In 2023-24 the Public Advocate advised on legislative and policy reforms affecting clients with impaired decision-making, including:

- Australia's Disability Strategy
- State Disability Inclusion Plan
- suicide prevention
- data sharing
- elder abuse prevention.

Advice was also provided on reforms regarding sexual consent, coercive control, the Public Trustee, bail agreements, residential tenancies, statutory declarations, affidavits, and the minimum age of criminal responsibility.

# Appearances

## Joint Standing Committee on the Implementation of the National Redress Scheme

The National Redress Scheme supports survivors of institutional child sexual abuse by acknowledging the abuse, holding institutions accountable, and providing access to counselling, direct personal responses and redress payments. It began on 1<sup>st</sup> July 2018, and runs for 10 years.

In late 2022, the Joint Standing Committee on the Implementation of the National Redress Scheme launched an inquiry focussing on First Nations applicants and those with disabilities, addressing issues like accessibility, support services, and legal advice.

In January 2023, the Public Advocate submitted details on additional barriers faced by clients and people with impaired decision-making ability. On 30 November 2023, Public Advocate representatives presented before the committee. The submission will be available on the OPA website after the inquiry concludes.

## Joint Standing Committee on the NDIS

In August 2023, the Public Advocate appeared before the Joint Standing Committee on the NDIS which was investigating the NDIA's capability and culture. Alongside other officials, the Public Advocate discussed the complexities of guardianship, and the OPA's interaction with the NDIS. Key points included challenges clients face, demographic insights, and advocacy for evolving needs. Suggestions for improvement included:

- recognising public guardians in the NDIS Act
- streamlining NDIS plan reviews
- enhancing regulation of service providers
- automatically assigning specialist support coordination for Public Advocate clients
- ensuring supported decision-making through NDIS plans and aged care plans.

The Public Advocate also highlighted the qualifications, dedication, and effort of OPA staff, including their after-hours service and the My Life My Wishes project.

# National Disability Insurance Scheme

## National Disability Insurance Scheme and Public Advocate clients

The final report from the Independent Review of the National Disability Insurance Scheme, presented to the Minister for the NDIS, Hon Bill Shorten MP, on 27 October 2023 includes 26 recommendations with 139 actions for system reform. The Public Advocate made submissions to this Review and the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024, which are available on the [OPA website](#).

The NDIS has generally improved funding for Public Advocate clients, thanks to strong OPA advocacy. However, the lack of case management within the NDIS, has increased the OPA's workload, leading to the creation of roles such as the Guardianship Liaison Officers. The Public Advocate ensures that all clients under the age of 65 are NDIS participants or have their eligibility tested.

As of 30 June 2024:

- 1,473 clients (68%) had an NDIS plan: 1,309 clients under 65 and 164 clients over 65
- 52 clients under 65 were not identified as NDIS participants, mostly because they were new clients of the Public Advocate. OPA staff investigate the circumstances of all clients under 65 who are not NDIS participants and ensure they gain access.

The OPA is negotiating with the NDIA for better information exchange and regularly updates its policies to ensure optimal client support.

Regular meetings with NDIA representatives and participation in various forums help address urgent client matters and systemic issues.

## NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission (the NDIS Commission) which has regulated NDIS service providers since July 2018, is working with the OPA to review their information disclosure schedule. This exchange enhances safeguarding especially in behaviour support and restrictive practices, and improves handling of complaints, reportable incidents, and compliance.

The Commission participated in several OPA stakeholder meetings, including the *OPA Disability Forum* and the *Public Advocate Clients and Domestic Family Violence Working Group*. The Public Advocate has also submitted feedback on the Quality and Safeguarding Framework to the NDIS Review.

# Safeguarding Adults

## Adult Safeguarding Unit

The Office for the Ageing (Adult Safeguarding) Amendment Act 2018 (SA) established the Adult Safeguarding Unit (ASU) within the Office for Ageing Well, DHS. The ASU is tasked with:

- Receiving, assessing, and investigating reports of suspected abuse of vulnerable adults
- Referring cases to other organisations as needed
- Coordinating multi-agency responses and follow-ups
- Collecting data and advising the minister and others

The unit operates under a Charter of the Rights and Freedoms of Vulnerable Adults, ensuring a human rights-based approach tailored to those experiencing abuse or neglect.

The OPA is part of the Adult Safeguarding Advisory Group, which meets three times a year to:

- Advocate for the rights and interests of vulnerable adults
- Promote individual participation in decisions affecting them
- Develop prevention and early intervention strategies

The OAW oversees the Strategy to Safeguard the Rights of Older South Australians and its action plan, focusing on elder abuse prevention and awareness.

The Public Advocate has an Administrative Agreement with the ASU to refer potential abuse cases. They are also involved in the Abuse Prevention phone line and the ASU Implementation Workgroup, which meets quarterly to discuss the phone line, referral pathways, and safeguarding outcomes. The Abuse Prevention phone line offers support, referrals, and information, acting as the gateway to the ASU. Staff handle abuse reports to create tailored safeguarding plans for those affected.



# Unmet need

## Housing

### Unmet need in housing

Key issues for the OPA in housing include:

- reduced access to housing and accommodation
- reliance on private rental markets with high rental costs, lack of security of tenure and combined tenancy and support arrangements
- Specialist Disability Accommodation (SDA) supply
- the challenges for SAHT as social housing provider of last resort
- returning to culture and Country for Aboriginal clients
- the need for a disability housing strategy and action plan.

Public Advocate clients are among the most vulnerable people in South Australia and for whom homelessness remains a critical risk. Finding safe and affordable housing remains challenging as systemic responses are inadequate, exclusionary, and in some instances non-existent. The Public Advocate sees increasing numbers of individuals struggling with housing issues. This has substantial effects on both the individuals affected and the broader community.

#### *Reduced access to housing and accommodation*

In the past year, systemic barriers to stable accommodation for OPA clients have intensified. Many clients are deemed unsuitable for independent living in public housing, too challenging for disability support services and aged care, and too complex for community housing providers or mainstream homelessness responses. This trend disenfranchises clients from accessing safe and suitable short and long-term accommodation.

#### *Reliance on private rental markets with high costs, lack of security of tenure and combined tenancy and support arrangements*

The lack of adequate public and community housing for clients needing 24/7 support often results in suboptimal arrangements, where a NDIS provider both leases a property through a rental agreement and provides support services funded by the NDIS. These tenancy arrangements, often known as closed SIL arrangements, are not adequately protected by the [Residential Tenancies Act 1995](#) (SA) leading to instability for clients. If supports break down, clients risk losing their accommodation because the provider leasing the property

may not permit another service to provide support. This leads to higher rates of housing instability, increased transience and homelessness. This can result in hospital admissions, hotel accommodation or extended stays in inpatient or correctional settings due to accommodation failures. Such arrangements are rarely aligned with client preferences and come at significant cost to the State, and the client.

Australia has spent decades separating housing provision from support provision. With the advent of the NDIS, this policy and practice has been abandoned as support providers have become the landlord through leasing properties in the private rental market. Of particular concern, clients with challenges arising from their disability can be displaced from the service with recommendations to access 'SIL Accommodation' (proxy for private rental arrangements), as a strategy to address their housing need. There is a conflict of interest in being both the support provider and landlord which should be reported to the NDIS Quality and Safeguards Commission. This is a compliance activity for which the NDIS Quality and Safeguards Commission is responsible. It is not clear if this occurs as there has been no change in practice in recent years.

Over-reliance on the expensive private rental market for complex clients with disabilities masks the urgent need for social housing. Public Advocate clients are protected people of the state and should have access to social housing rents (25% of their income, plus Commonwealth Rent Assistance) and security of tenure. Due to a lack of social and community housing, clients often pay excessive market rent, have limited security of tenure, and are charged up to 80% of their income (Disability Support Pension) for living costs. These clients should be a priority for social and community housing as protected state clients.

### *Specialist Disability Accommodation (SDA) supply*

NDIS participants needing housing must have a home and living supports goal, supported by evidence demonstrating the need for SIL and SDA. The processes are complex, resulting in long waiting periods, often spanning several months, with lengthy review and appeal processes. Client support ratios typically involve shared support (1 staff to 3 participants), making it challenging to match clients with appropriate support for complex needs.

While some OPA clients qualify for SDA in NDIS plans, the housing supply remains insufficient. SDA and other funding streams have not been fully utilised to develop customised housing for people requiring robust and high physical support accommodation builds. NDIS providers have not yet developed sufficient flexible accommodation options to provide choice in SIL for clients with disabilities, leaving clients to rely on the strained private rental market. There are a number of clients with SDA in their plans that cannot be utilised due to a lack of supply.

### *The challenges for SAHT as social housing provider of last resort*

Public (social) and community housing have traditionally fulfilled the role of housing providers of last resort for South Australians including those with a disability. Increasingly the community housing sector plays a role in providing for people with a disability who require supported accommodation. This strategy is supported as clients pay 25% of income on rent (plus Commonwealth Rent Assistance). However, the supply of housing in this sector has not kept pace with demand. Similarly, the private sector is suggested as the provider of SDA with the South Australian Housing Trust (SAHT) not being registered as an SDA provider in South Australia (SA). The private sector has under-delivered on SDA housing in SA. Even if the SAHT is not an SDA provider the state has a leadership role in the development of more community housing stock and SDA housing to meet the significant unmet needs in SA.

People with impaired decision-making ability are at greatest risk of homelessness and housing insecurity with many of them requiring support to maintain their housing due to their disability. This support may be funded via the NDIS plan. On occasion, Public Advocate clients have been evicted or not had their lease renewed in public housing resulting in homelessness and hospitalisation which is an expensive cost to the state. The state has a responsibility for the safety of vulnerable protected South Australians living with a disability.

### *Returning to culture and Country*

Aboriginal clients are disproportionately affected by homelessness or unsuitable accommodation. The OPA has undertaken a project to better understand and respond to the wishes of Aboriginal persons with a guardianship order appointing the Public Advocate. Many Aboriginal clients report feeling disconnected from Country and culture with no clear pathways to return to Country under current service structures and arrangements. The OPA is seeking ways to reconnect Aboriginal people with their cultural roots, through the development of goals and funding in their NDIS or My Aged Care plans.

### *The need for a disability housing strategy and action plan*

South Australia requires a housing, homelessness and support strategy that directly addresses the requirements of those people in the community with very complex needs associated with impaired decision-making ability arising from disability. It is this group of people who are particularly vulnerable for whom it can be difficult to locate suitable accommodation with appropriate supports. A regular supply of specialised housing and accommodation options for such people, including those with psychosocial disability and challenging behaviours, is vital to meet their needs. This will also better ensure that inpatient beds are freed up and that public safety and wellbeing is enhanced. The ongoing impact of their housing needs not being met is significant to the State. A continuous capital investment in supported and specialist disability housing that provides for independent

living should be included in a dedicated homelessness, housing, and support strategy for this highly vulnerable group in our community.

As stated earlier in this section, the Public Advocate is aware of clients who have Specialist Disability Accommodation (SDA) funding in their NDIS which has not been utilised. This is a missed opportunity to work with SDA providers to develop housing for clients. The OPA has developed principles for engaging SDA providers as well as model contract arrangements to increase supply. A State Disability Housing Strategy is needed to increase the supply of community and SDA housing and to develop better policy and practice in dealing with the eviction or non-renewal of leases for state clients living in social housing to prevent homelessness, hospital admissions and people living in expensive and inappropriate housing options.

### Addressing unmet need in housing

Priority actions identified by the OPA to address gaps in housing.

1. A State Disability Housing Strategy is needed as a matter of priority to:
  - a) increase the supply of social, community and SDA housing for people living with a disability
  - b) develop policy and practice to prevent evictions and non-renewal of leases for social and community housing clients, to prevent hospital admissions, homelessness and inappropriate housing options (e.g. hotels); and
  - c) create a connected social housing system for matching supply and demand and for the relocation/re-housing for people with disability who are state clients who might face eviction or non-renewal of a lease.
2. Increase the supply of housing, accommodation and SIL options for people with disabilities, including psychosocial disabilities, with a particular focus on clients with complex needs.
3. Support for community housing providers to expand the supply of community housing for clients with SDA, especially for robust housing
4. Increase the supply and prioritise access to community housing for NDIS participants who require affordable housing options (for those that do not receive SDA funding).
5. The requirement for tenancy agreements to comply with the standards and obligations of the [\*Residential Tenancies Act 1995 \(SA\)\*](#).
6. A 'matching' mechanism for demand and supply of supported disability accommodation, such as a supported accommodation register, in South Australia.

# Disability services

## Unmet need in disability services

The most pressing issues for people with disabilities who are NDIS participants continue to be:

- provider conduct and utilisation of the NDIS plan
- NDIS Review and recommendations of the Disability Royal Commission
- interface of the State and Commonwealth responsibilities for disability support
- support and guardianship for hospital inpatients experiencing health decline
- improved pathways from child to adult guardianship
- lack of crisis responses and clear escalation pathways
- lack of case management support, and
- the need for a service provider of last resort.

### *Provider conduct and utilisation of the NDIS plan*

Many NDIS providers offer appropriate, client-focused support, but there is a rise in plan overutilisation, leading to crisis responses to maintain support continuity. This, combined with reduced funding, forces participants to change accommodation or providers, or be forced into temporary accommodation including hospital. Without prompt regulatory action, overutilisation of the NDIS plan leaves individuals with disabilities in vulnerable situations. The review process with NDIA is lengthy and depletes allied health resources, often triggering reactive responses only after funds are exhausted.

A more proactive approach and stronger oversight from plan managers, support coordinators, and regulatory bodies is needed. Additionally, challenges remain in finding suitably trained staff for clients with complex psychosocial disabilities. This is exacerbated by the rapid growth of the sector and difficulties in staff recruitment.

The rise of unregistered sole traders complicates securing appropriate support, oversight, and safeguarding for participants with high needs. Specialist support coordinators often lack experience in sourcing housing or providing necessary evidence for tailored support, creating gaps in care. Changes in NDIA pricing has also led some providers to drop essential services, disadvantaging participants.

The crisis response to safeguard Public Advocate clients is often reactive as the issue is often highlighted after the NDIS plan funds are depleted, which leads some providers to relinquish certain critical services and at times, seek to refer clients to hospital.

### *NDIS Review and the recommendations of the Disability Royal Commission*

The Disability Royal Commission's recommendations emphasise supported decision-making to empower individuals with disabilities. However, aligning these recommendations with NDIS funding can be challenging. For example, if someone wants to live independently but their NDIS plan only funds shared accommodation, fulfilling their wishes while ensuring safety becomes difficult. The Public Advocate strives to support individuals' rights and choices, but the mismatch between personal preferences and funding limitations often complicates this effort.

### *Interface of the State and Commonwealth responsibilities for disability support*

The Applied Principles and Tables of Support (APTOS) delineate the responsibilities of various state-based sectors in assisting individuals with disabilities. These supports are meant to complement NDIS-funded supports and need to be tailored to each person's specific needs. Given the complex and high needs of many clients, a flexible and collaborative approach between State and Commonwealth services is crucial to effectively address these challenges. This is important given the proposal to establish foundational supports in future.

### *Support and Guardianship for hospital inpatients experiencing health decline*

The South Australian acute care sector is under significant pressure, creating a ripple effect on the social services system. Social admissions have become a last resort to protect vulnerable individuals due to breakdowns in support systems. Limited availability of aged care placements and appropriate Supported Independent Living (SIL) options for Public Advocate clients has led to extended hospital stays, even when clients are ready for discharge. Given the current pressures on the healthcare system, these extended stays have become more common.

Public Advocate staff exert considerable effort to prevent unnecessary hospital admissions and to expedite discharges through active stakeholder engagement and collaboration with the Commonwealth, State, and NGO sectors. Some interstate counterparts have established guardianship teams specifically to manage the interface with the health sector, facilitating prompt and appropriate responses.

People with disabilities may need more complex and intensive support following a decline in health. However, delays in accessing increased support can occur due to the time required for evidence gathering, uncertainty about long-term funding needs, and the scarcity of appropriate service providers once funding is approved.

### *Improved pathways from child to adult guardianship*

Clients with disabilities transitioning from youth to adult guardianship are highly vulnerable. For those under guardianship of the Chief Executive of the Department for Child Protection (DCP), DCP staff apply to SACAT for adult guardianship as they turn 18.

The Public Advocate becomes guardian for former DCP clients often with complex psychosocial needs, including trauma, neglect, and abuse. These clients typically exhibit significant behaviours, are highly mobile, and are at risk of violence, exploitation and substance abuse.

Former DCP clients frequently lack the skills needed for independent living and require more support than what the NDIS provides. They are often funded for 1:3 (1 support worker for 3 clients) or 1:4 shared support ratios which provides inadequate levels of support to meet their complex needs.

### *Lack of crisis response and clear escalation pathways*

Whilst the OPA has developed responsive pathways for urgent plan reviews with a dedicated phone number to speak to the NDIA about clients, crisis responses and escalation pathways are limited when support services or housing fails.

Existing pathways do not offer same-day responses, and after-hours options do not effectively secure alternative accommodation or support. Current crisis options are inadequate, often limited to hospitals or unsuitable arrangements including hotels.

A more responsive crisis pathway is urgently needed for temporary, urgent and crisis accommodation.

### *The lack of case management support*

The lack of case management in the NDIS significantly affects clients and others with impaired decision-making, who need help navigating the system. The NDIS avoids case management to prevent disempowerment, but those struggling with choice and control or who are not engaged with services still require it. Although the NDIS offers support coordination, it is limited, only available upon request and not available after regular business hours. The NDIS Review proposed the Navigator role to address this, but details are still pending.

### *Need for a service provider of last resort*

Since the NDIS began, funding for the disability sector has increased significantly, leading to the rapid expansion of existing providers and the emergence of new ones. In the current market, service providers can choose their clients, and some may take on those with complex needs but later withdraw if they cannot offer the necessary specialised support. This often results in service interruptions and homelessness for clients, particularly those

under Public Advocate guardianship. Finding a replacement provider at short notice is challenging, highlighting the need for a last-resort provider to step in when others cannot meet the required support. The OPA has been working with DHS Disability Services to address this issue for clients who have exhausted other options. It is noted that the NDIS Review and the Royal Commission into Abuse Neglect and Exploitation of People with Disabilities recommended the establishment of a provider of last resort.

## Addressing unmet need in the disability sector

Strategies identified by the OPA to address unmet need in the **disability sector**.

1. Better regulation and accountability of NDIS providers via the NDIS Quality and Safeguarding Commission and other regulatory bodies.
2. The implementation of increased safeguarding and monitoring of NDIS plans to protect NDIS participants from plan overspend and exhaustion and avoid hospitalisation or hotel accommodation.
3. Redefining the APTOS to clarify the funding responsibilities of the State and Commonwealth in relation to disability care and support.
4. A review and appeal mechanism to address and adjudicate on funding discrepancies between the State and Commonwealth.
5. The introduction of comprehensive case management in the NDIS for participants, which is funded outside of the NDIS plan, and is not time or funding-limited.
6. Establishment of a 'provider of last resort' to address the current market failure for highly vulnerable and at-risk adults with impaired decision-making ability.
7. Establishment of responsive crisis pathways and gateway services to safeguard vulnerable clients who are in urgent need of crisis, temporary and immediate accommodation, including after business hours.
8. Greater supply of suitably trained providers and support specialists who are experienced in the care and support needs of vulnerable adults with impaired decision-making ability, and who present with complex needs including dual diagnosis, psychosocial disabilities and challenging behaviours.
9. Education of specialist and support coordinators regarding housing options.

# Mental health services

## Unmet need in mental health

Access to mental health services for protected adults under State guardianship is a particular area of concern.

Key mental health related issues for Public Advocate clients include:

- inflexible definitions of mental health including intellectual disability
- the condition and adequacy of forensic mental health services
- the availability of community mental health services for clients with psychosocial and other disabilities
- exclusionary trends in aged care for people with severe mental health conditions
- use of guardianship orders to alleviate hospital and forensic discharge pressures.

### *Inflexible definitions of mental health*

Clients with psychosocial disabilities often have underlying mental health issues that are unreported, undiagnosed, or hidden amongst other challenging behaviours. Current service systems frequently exclude those who do not fit traditional diagnostic criteria, and whose primary presentations are:

- behavioural
- personality-based
- anti-social in nature
- related to a history of trauma and abuse
- polysubstance abuse
- intellectual disability.

Those who fail to meet mental health diagnostic criteria, or intake measures, are commonly excluded from state-based health services and programs, receive less Commonwealth and State-funded supports in the community and are discharged from tertiary healthcare providers without further assessments. They are discharged to homelessness or inappropriate accommodation, and do not meet access requirements for community mental health supports thereby preventing crisis hospital admissions and premature discharge. Intellectual disability is often specified as an exclusionary criteria in mental health services models of care.

### *The condition and adequacy of forensic mental health services*

Public Advocate clients are over-represented in Forensic Mental Health (FMH) Services, often detained under forensic court orders or are awaiting release decisions. The state's FMH facilities are outdated and inadequate, causing acute mental health patients to wait in

emergency departments or be diverted to prisons and correctional facilities. The unsustainable arrangement creates interdepartmental tensions and further strain on the system and inappropriate placement of clients in non-forensic mental health services.

Currently, FMH facilities at James Nash House do not cater for diverse populations that increasingly present with acute and forensic mental health needs. James Nash House provides an acute service in the Aldgate (intensive inpatient care), Birdwood (acute and sub-acute care), and Clare (low activity rehabilitation care) wards.

James Nash House was built in the 1980's based on a custodial model and is not conducive to providing a therapeutic environment. There is limited natural light and this year, the security system failed at times resulting in clients spending longer than usual periods of time in their rooms with higher security. The Chief Psychiatrist has placed gazettal conditions on these wards, requiring additional approvals for patient admissions. The gazettal reflects the inadequacy and dated condition of the facility.

It was however, pleasing to see some refreshed painting and televisions being available in some patient bedrooms during the year. As reported in previous years, James Nash House requires replacement. The adjacent Ken O'Brien (KOB) Rehabilitation building built in 2014 is modern with significant natural light, line of sight of patients by staff, individualised rooms with ensuites with outdoor gardens and exercise areas, providing and much more appropriate therapeutic environment. Acutely unwell and recovering forensic patients at James Nash would benefit significantly from a similar environment to the KOB.

Upgraded FMH facilities at James Nash House, increased availability of FMH beds, and the provision of specialist mental health units in correctional settings is urgently required. The forensic disability service, Tarnanthi and sub-acute unit, is located at the Glenside campus in a former psychiatric intensive care unit. This service supports people with intellectual disability or brain injury who were formerly accommodated at James Nash House. The move to Glenside was welcomed as a temporary arrangement in June 2019. Whilst an improvement, space for patients in communal areas and outdoor areas is limited to the former short stay service at the site. These clients can be long-term patients and a new location with better internal and external amenity is required for the Tarnanthi and sub-acute unit service and patients.

### *The availability of community mental health services for clients with Psychosocial disability and other disabilities*

Many OPA clients under 65 are eligible for NDIS support, but some either do not meet eligibility criteria or have exceptional needs that increase their risk of homelessness. Those with complex psychosocial disabilities, who often receive limited NDIS support, frequently end up in inadequate short-term accommodation like boarding houses, supported residential facilities, hotels, homelessness services, hospitals, and correctional settings.

In South Australia, individuals with psychosocial disabilities face significant gaps in the fragmented health and disability systems. Clients with high-risk behaviours, such as extreme self-harming, often lack adequate intervention and discharge planning, resulting in repeated cycles through acute mental health services and insufficient community support. Hospital discharges are often managed by untrained disability support providers, leaving high-risk clients without proper care. Community mental health services are inconsistently responsive for clients with mental health needs. While clients subject to community treatment orders meet access requirements for services, other clients do not engage well due to voluntary service models. Clients may be recorded as “closed cases” if they fail to identify therapeutic goals, lack motivation and engagement, or miss scheduled appointments. This poorly reflects the lives and complexities of persons with disabilities who often struggle to engage in mainstream service systems without significant support or assertive engagement strategies.

### *Exclusionary trends in aged care for people with severe mental health conditions*

A major issue for older South Australians with severe mental illnesses is the lack of mental health services and poor integration with mainstream aged care providers. The Public Advocate has observed an increase in older clients with conditions such as psychosis, schizophrenia, schizoaffective disorder, major depression, and delirium in RAC. These facilities often lack the training to address mental health needs, leading to inadequate care. Consequently, older clients with more complex mental health conditions are frequently excluded from mainstream aged care, which favours residents without such conditions. This trend is likely to increase with the rapidly growing ageing population.

### *The use of guardianship orders to alleviate hospital and forensic discharge pressures*

Over the past year, the OPA has observed an increase in SACAT applications for guardianship orders appointing the Public Advocate to assist with hospital discharge arrangements for persons with mental health conditions. While the Public Advocate can be appointed when no other suitable decision-maker is available, this appears to be an emerging trend at the time of hospital discharge. This has reflected in the growth in applications to SACAT of 34% from March 2023 to March 2024.

This has created an expectation where the Public Advocate is appointed to make critical decisions for vulnerable clients immediately after SACAT hearings, often without prior knowledge of the individuals or their circumstances. The Public Advocate has statutory obligations under the *Guardianship and Administration Act, 1993* when taking on new clients and making decisions about their health, accommodation and services.

## Addressing unmet need in the mental health sector

Priority actions identified by the OPA to address gaps in support for **people with mental health conditions**.

1. James Nash House replacement/ refurbishment to create a more therapeutic, modern and recovery orientated service
2. The relocation of the Forensic Disability Service, Tarnanthi and sub-acute unit to provide more space and appropriate accommodation for forensic patients with an intellectual disability or brain injury.
3. An increase in mental health forensic beds to improve the well-being and appropriate placement of forensic inpatient clients.
4. Improved access to mental health services for guardianship clients with psychosocial and intellectual disabilities, including for clients who are not voluntarily engaging.
5. Development of a broad range of accommodation options that includes specialist accommodation for younger and older people with severe mental illness.

## Aged care

### Unmet need in aged care

Key issues for the OPA in aged care include:

- increased appointments
- limited availability of aged care beds and permanent placements for people with high and complex need
- receiving necessary care at home
- use and authorisation of restrictive practices
- quality and safety standards
- workforce planning.

The OPA has established a specialised team to respond to the growing number of Public Advocate clients in aged care. This team enhances stakeholder engagement, provides education, and addresses issues related to restrictive practices, particularly detention and chemical restraint.

### *Increased appointments*

Family conflict regarding the care and support for older South Australians has led to an increase in orders appointing the Public Advocate as guardian. The rise in complex family dynamics and conflict in society, including blended families, is leading to more Public Advocate appointments. The growth in appointments is also a feature of the ageing of South Australia's population.

The Public Advocate encourages families and services to seek out a responsible person who could assist with decision-making, as well as mediation or dispute resolution to work collaboratively with care teams for elderly family members before considering public guardianship.

### *Limited availability of aged care beds and permanent placements for people with high and complex need*

With the rapidly ageing population over 65, including those with disabilities, mental health issues, and dementia, the OPA has observed a trend where residential aged care facilities (RACFs) selectively accept clients who are less complex and avoid those with higher needs or challenging behaviours. This practice has resulted in OPA clients spending extended time in hospitals, causing significant delays to discharge and extended stays.

Due to the limited options and discharge pressures, the OPA often must accept less-than-ideal placements far from local communities. The reluctance of RACFs to offer permanent beds to clients with complex behaviours leads to repeated moves and hospital re-admissions. RACFs require the support of Positive Behaviour Practitioners to assist clients with complex needs. This issue highlights the need for either a legislative change requiring RACFs to accept clients with disabilities and mental health conditions or the establishment of specialised or a state-based aged care provider of last resort.

### *Receiving necessary care at home*

The Aged Care Royal Commission highlighted unmet demand for home care packages and long waiting times to access home care. Delays and inadequate supply of home care often requires the Public Advocate to consent to residential care placements prematurely and against clients' wishes, to ensure their safety.

The Public Advocate strongly supports Recommendation 39 of the Royal Commission, which calls for immediately increasing and allocating home care packages.

### *Use and authorisation of restrictive practices*

Currently the aged care system lacks a clear, formal process for the authorisation and use of restrictive practices. The DHS has established a Restrictive Practice Unit that authorises and monitors restrictive practices in NDIS services. The guardian is consulted and can seek

review but is not the authorising officer. However, in aged care the guardian is still requested to authorise the use of some restrictive practices every three months. A senior authoriser/practitioner to authorise restrictive practices in aged care is a preferred model.

The proposed new Aged Care Act, has been delayed until July 2025 and currently, does not recognise the role of a state based statutory guardian. It requires consent from a person appointed by the Aged Care System Governor, which may or may not be the state based appointed guardian. This issue is unresolved at this time.

### *Quality and safety standards*

The Public Advocate received notifications from residents, families of persons residing in aged care, private citizens and care providers about the quality and care standards of various aged care providers and facilities.

The Public Advocate also received correspondence from the Aged Care Quality and Safety Commission regarding providers and care facilities that had failed to meet required aged care standards, in particular relating to:

- **Standard 3: Personal Care and Clinical Care**
  - involving high-prevalence and high-impact risks involving pressure and falls-related injuries, wound care standards, pain management, the use of chemical restraint, and infection management associated with COVID-19; and
  
- **Standard 7: Human Resources**
  - involving the availability of trained and accredited staff, adequate staffing ratios, and call-bell waiting times resulting in care deficits.

Effective oversight and sanctions are required for facilities and providers who continue to fall short of the expected care standards for older people in the community.

When notified, the Public Advocate reviews the nature of sanctions and takes appropriate action. This may include OPA staff visits to all clients living in and receiving services from the provider, assessing the risks to clients, and discussing mitigation strategies. In some instances, relocating the client may be the most appropriate action.

### *Workforce planning*

The scarcity of trained and accredited health professionals, allied health professionals and personal care workers in aged care facilities can pose risk to the sector and clients.

The Public Advocate emphasises the need for aged care workforce planning and strategies to attract and retain skilled workers, including a review of qualifications, competencies and award rates.

## Addressing unmet need in the aged care sector

Strategies identified by the OPA to address unmet need in the aged care sector.

1. Greater alignment of the regulation and authorisation of restrictive practices for people receiving aged care and NDIS services.
2. A senior practitioner to authorise restrictive practices in the aged care sector, like that in the disability sector is recommended.
3. Increase the supply of suitable RACFs equipped to support complex clients and those with mental health conditions.
4. Increasing the availability of behaviour support specialists who have training and expertise in dementia management and the needs of older people.
5. Adoption by the Commonwealth of Recommendation 39 of the Aged Care Royal Commission, to provide prompt access to home care packages for people who need them.
6. As in past years, the recognition, use and funding for supported decision-making in My Aged Care plans to assist older people to express their wishes and preferences and to plan for their future care.



# Innovating

## OPA initiatives and projects

### NDIS Mainstream Capacity Building Program-funded project 'Living My Life'

In 2020, the South Australian Health and Medical Research Institute, the OPA and the Department of Health and Wellbeing launched the 'Living My Life' project, funded with \$1.28 million from the Commonwealth Community Grants Hub, on behalf of the NDIA.

The project was extended to June 2024 due to COVID-19 delays. Key achievements include:

- the development and pilot of the *My Life My Wishes* planning document, allowing OPA clients with impaired decision-making to record their life wishes
- supported decision-making training for OPA staff
- a video series on supported decision-making available on the OPA website
- training sessions delivered to hospitals across Local Health Networks.

The extension allowed further piloting of the *My Life My Wishes* document, with 662 completed for Public Advocate clients by 30 June 2024.

### Substitute Decision Maker Toolkit

The OPA, with funding from the Office for Ageing Well (DHS), developed the "Now You Are a Substitute Decision-Maker" toolkit and workshop series to guide substitute decision-makers appointed under an Advance Care Directive (ACD). The toolkit which was launched in Plan Ahead Week in September 2023 includes:

- a guide with 'tear out' pages for recording appointers' wishes
- a suite of videos
- plain English and easy read fact sheets.

It provides substitute decision-makers with resources to fulfil their role and helps appointers ensure their wishes are upheld. The OPA also conducted community information sessions in late 2023 and early 2024 to promote the new resources and encourage people to document their wishes. This project aligns with the recommendations from the review of the [\*Advance Care Directives Act 2013\*](#) (SA) and South Australia's Plan for Ageing Well 2020-2025. More details are available [on the OPA website](#).

## Australia's Disability Strategy, Safety Targeted Action Plan (Safety TAP) Culturally Safe Supported Decision-Making

In December 2022, the OPA received a Department of Social Services grant to pilot the "Culturally Safe Supported Decision-Making" project, aligned with Australia's Disability Strategy Safety Targeted Action Plan.

The project ran from 1 April 2023 to 30 June 2024 and aimed to:

- help OPA staff determine aboriginal clients' life preferences, future health care and accommodation wishes using culturally appropriate tools and practices
- improve OPA's culturally appropriate practices with Aboriginal clients
- educate other agencies on supported decision-making practice to uphold human rights for Aboriginal people.

Deliverables included:

- culturally appropriate supported decision-making tools
- a training package to support culturally safe practices
- documentation of Aboriginal clients wills and preferences
- evaluation of tools and practice
- community education on the benefits of supported decision-making.

# Business improvement projects

## Easy read fact sheets

Easy-read fact sheets about the OPA are now available on the OPA website. These include topics such as:

- What is the OPA?
- Guardianship and the Public Advocate
- Information Service
- Dispute Resolution
- What is Mediation?

Additional fact sheets cover Guardianship and Administration Orders, Advance Care Directives, and Substitute Decision-Making. These resources are designed to make information about the OPA accessible to all, aligning with Action 3.5 of the Attorney-General's Department Disability Access and Inclusion Plan 2020-2024, which aims to develop easy-read versions of key strategies and materials.

## Wellbeing Working Group

The OPA Wellbeing Working Group (WWG), established in early 2024 with representatives from across OPA teams, advises the leadership team on wellbeing initiatives. The WWG's goals are to:

- gather staff feedback on workplace wellbeing ideas
- develop, recommend and support wellbeing initiatives to the leadership team
- organise social and team-building events for OPA employees
- promote additional wellbeing resources, such as AGD initiatives

The WWG has met four times and organised an event for Reconciliation Week in 2023-24.

## New OPA intranet

In 2023-24, a new intranet site was developed and launched on May 15, 2024, for Public Advocate staff. The modern, accessible site is continually updated to meet the office's needs and offers a range of resources including:

- links to frequently used pages
- an induction page for new staff
- team pages with function details
- a comprehensive document library
- links to the OPA website, Felix client management system, and AGD SharePoint site
- access to the latest Public Advocate communications.

## Professional development

The OPA offers various professional development opportunities for staff, including training modules from the Attorney-General's Department and guest speaker events. Over the past year, guest speakers have included:

- South Australian Council for Intellectual Disability (SACID)
- Drug and Alcohol Services South Australia (DASSA)
- South Australian Housing Trust (SAHT)
- Crown Solicitor's Office (CSO) on information sharing guidelines
- Multidisciplinary Community Geriatrics Service
- Office for Autism
- Consumer and Business Affairs on Residential Tenancies Act reforms
- Multi Agency Protection Services
- Attorney-General's Department Wellbeing and Safety Team.

## Organisational reporting

The OPA has continued to enhance reporting capabilities throughout 2023-24.

Improvements include:

- The creation of a data dashboard for the housing risk register, to monitor clients in unsuitable accommodation or facing risks, such as difficulties finding Specialist Disability Accommodation (SDA) despite approved SDA funding through the NDIS.
- Scoping and early integration of data automation into business workflows. The Attorney-General's Department has offered further support with automation to innovate and make an impact on high volume workflows.
- The development of a forecasting model to allow flexible analyses of client visitation rates and targets.
- Improvements to recording options and ad-hoc reporting capabilities.

These new capabilities provide additional safeguards for guardianship clients and strengthen trend analysis, forecasting and risk management strategies within the OPA.

## Business Process Improvement Project

Toward the end of 2023-24, the OPA contracted an expert business analyst to examine OPA's business practices and processes, focusing on managing the increasing volume of correspondence from interested parties and service providers. The project confirmed the growing volume, recognised the staff's excellent work and achievements, and provided recommendations to further improve processes.

The OPA has reviewed these recommendations, prioritised them, and plans to implement them in 2024-25.



# Engagement

## Meetings

In 2023-24, the Public Advocate met with key Ministers to discuss systemic issues impacting Public Advocate clients. Meetings were held with the following ministers:

- Hon Kyam Maher MLC, Minister for Aboriginal Affairs and Attorney-General
- Hon Chris Picton MP, Minister for Health and Wellbeing
- Hon Katrine Hildyard MP, Minister for Women and the Prevention of Domestic and Family Violence
- Hon Nat Cook MP, Minister for Human Services.

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

- restrictive practices
- adult safeguarding
- Disability Royal Commission
- NDIS Review and legislative reforms
- aged care legislative reforms
- growth in guardianship appointments and contributing factors
- trauma responsive service to divert clients from hospital admissions
- mental health services
- OPA/ South Australian Health and Medical Research Institute research project
- Commonwealth grant for culturally safe supported decision-making
- supply of supported accommodation for people with complex needs
- guardianship and law reform
- housing and homelessness
- the review of the [Advance Care Directives Act 2013 \(SA\)](#)
- the review of the [Ageing and Adult Safeguarding Act 1995 \(SA\)](#)
- the review of the [Disability Inclusion Act 2018 \(SA\)](#)
- information exchange
- housing for complex clients
- domestic violence and Public Advocate clients.

## Australian Guardianship and Administration Council (AGAC)

The Public Advocate is a member and Deputy Chair of the Australian Guardianship and Administration Council (AGAC). AGAC is 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 meetings continue to inform systemic advocacy and strategic policy development, particularly in the areas of national reforms to enduring powers of attorney, restrictive practices, safeguarding adults and supported decision-making. Further information about AGAC can be [found on its website](#).



# Appendices

## Appendix 1: Legislation

The general functions of the Public Advocate are set out in section 21(1) of the *Guardianship and Administration Act 1993 (SA)*:

- a) to keep under review, within the public and private sector, all programmes designed to meet the needs of mentally incapacitated persons;
- b) 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;
- c) to speak for and promote the rights of any class of mentally incapacitated persons or of mentally incapacitated persons generally;
- d) 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;
- e) to give support to and promote the interests of carers of mentally incapacitated persons;
- f) 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 this Act;
- g) 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 (SA) and Regulations

Aged Care Act 1997 (Cth)

Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Act 2021 (Cth)

Ageing and Adult Safeguarding Act 1995 (SA)

Consent to Medical Treatment and Palliative Care Act 1995 (SA) and Regulations

Criminal Law Consolidation Act 1935 (SA)

Disability Inclusion Act 2018 (SA) and Regulations

Disability Inclusion (Restrictive Practices – NDIS) Amendment Act 2021 (SA)

Disability Services Act 1993 (SA)

Freedom of Information (Exempt Agencies) Regulations 2023 (SA)

Mental Health Act 2009 (SA) and Regulations

National Disability Insurance Scheme Act 2013 (Cth)

Powers of Attorney and Agency Act 1984 (SA)

Problem Gambling Family Protection Orders Act 2004 (SA)

Residential Tenancies Act 1995 (SA)

Supported Residential Facilities Act 1992 (SA)

Wills Act 1936 (SA)

## Appendix 2: List of acronyms

<b>ACD</b>	Advance Care Directive
<b>AGAC</b>	Australian Guardianship and Administration Council
<b>AGD</b>	Attorney-General's Department
<b>APEA</b>	Alliance for Prevention of Elder Abuse
<b>ASU</b>	Adult Safeguarding Unit
<b>DCP</b>	Department for Child Protection
<b>DCS</b>	Department for Correctional Services
<b>DHS</b>	Department of Human Services (SA)
<b>DRS</b>	Dispute Resolution Service
<b>FMH</b>	Forensic Mental Health
<b>NDIA</b>	National Disability Insurance Agency
<b>NDIS</b>	National Disability Insurance Scheme
<b>OAW</b>	Office for Ageing Well
<b>OPA</b>	Office of the Public Advocate
<b>PT</b>	Public Trustee
<b>RTA</b>	<i><u>Residential Tenancies Act 1995</u></i> (SA)
<b>SACAT</b>	South Australian Civil and Administrative Tribunal
<b>SAHT</b>	South Australian Housing Trust
<b>SAPOL</b>	South Australian Police
<b>SDA</b>	Specialist disability accommodation
<b>SIL</b>	Supported independent living

# Appendix 3: Compliance with Premier and Cabinet Circular (PC013) on Annual Report Requirements

The following table demonstrates the Office of the Public Advocate’s compliance with the Department of Premier and Cabinet Circular (PC013) on Annual Report Requirements:

<b>PC013 Statutory Reporting Requirement</b>	
Employment opportunity programs	Refer to the Attorney-General’s Department (AGD) Annual Report 2023-24
Agency performance management and development systems	Refer to the AGD Annual Report 2023-24
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2023-24
Work health and safety and return to work performance	Refer to the AGD Annual Report 2023-24
Fraud detected in the OPA	Number of instances: 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2023-24
Whistle-blowers’ disclosure	Refer to the AGD Annual Report 2023-24
Executive employment in the agency	Refer to the AGD Annual Report 2023-24
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2023-24
Complaint outcomes (table)	Refer to the AGD Annual Report 2023-24



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