



OPA 

OFFICE OF THE PUBLIC ADVOCATE SOUTH AUSTRALIA

ANNUAL REPORT

2022-2023



**Government
of South Australia**

Office of the Public Advocate



OFFICE OF THE PUBLIC ADVOCATE SOUTH AUSTRALIA

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Date presented to Minister:	22 September 2023

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.

Hon Kyam Maher MLC
Attorney-General

Dear 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.

Yours sincerely,



Anne Gale
Public Advocate

22 September 2023



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 under the guardianship of the Public Advocate with making 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 capacity.

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 capacity. 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 under guardianship of the Public Advocate.

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 enacted 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 capacity'. Where 'mental incapacity' is used, it refers to the terminology of the governing legislation.



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Introduction

Message from the Public Advocate

In the past twelve months, I have had the privilege of meeting many people who have a guardianship order and hear their stories of how they would like to achieve their goals and wishes.

During 2022-23, the number of people under public guardianship increased by more than 13 per cent, with 549 new appointments and 316 files closed.

The two primary growth factors in recent years have been:

- the NDIS, which replaced informal decision-making arrangements with a need for formally appointed decision-makers, and
- the Full Court of the Supreme Court's judgement¹ in May 2019 regarding the detention of people. This resulted in the need for special powers detention orders for people who cannot come and go freely and unaccompanied from their accommodation due to serious risk of harm.

These components are still having an impact, but our ageing population has emerged as a key driver in the increased growth of guardianship appointments. People are living longer with conditions like dementia and the effects following stroke or brain injury.

The housing crisis has emerged as the greatest impact for people under guardianship. Even with all stakeholders at the table, and funding and supports in place, pathways into appropriate housing are few for people with complex support needs. Many people under guardianship are caught in eviction and homelessness cycles, living in inappropriate housing and in situations where their tenancy rights are compromised.

South Australia needs clarity on the intersection between the housing market economy and state government responsibilities. To achieve this, a state disability housing strategy and policy for people requiring supported accommodation is required. An increase social and community housing is vital and, while recent announcements are encouraging, it will take years for the supply to meet demand after decades of the sale of social housing stock. The social and community housing sectors provide security of tenure and affordable rent (25% of income paid in rent) that allows people with limited income to find a home and is essential for people with a guardianship order.



¹ Public Advocate v C, B (2019) 133 SASR 353

Private rental accommodation is not affordable but is often the only option. Increasingly private rental accommodation is leased by an NDIS Supported Independent Living (SIL) provider who also provide the support services. Although this provides less housing security for the client, we often have to accept such arrangements to address an urgent housing need and due to a lack of social housing.

Restrictive practices is another key issue across disability, aged care and mental health sectors. Increased regulation has resulted in new authorisation and consent requirements, as service providers adapt to working appropriately with restrictive practices to minimise and eliminate them where possible.

The NDIS has seen a significant increase in disability service providers in the market, and while this provides more choice, limited regulation brings risks to both providers and clients. Standards must increase through training, development and appropriate wages for workers that reflect the value of these services.

People under public guardianship often have more than six service providers in their lives. Public Advocate staff attempt to engage Specialist Support Coordinators (SSCs) to take on case coordination/management functions that fell away as the commencement of the NDIS. However, SSCs are not available at the beginning of the NDIS planning process and engagement is limited by plan funding. Public Advocate staff work relentlessly to fill the gaps and have adapted to manage the surging administrative functions associated with multiple service providers.

Safety is a growing concern for some of the most independent people under public guardianship. These people are often young and are accessing the community independently. They should be encouraged to do so as far as possible. However, due to their impaired decision-making capacity they often form relationships that place them at risk of relationship violence, exploitation, coercion and control. Specialised trauma informed services are required to support these clients to prevent repeated hospital presentations and provide a more appropriate service response.

Supported decision-making can play an important role for people and is a process through which a person is supported without influence to make their own decisions. It is the future and a step towards reducing the need for public guardianship. While it takes time, resources and patience, we must educate supporters of people with impaired decision-making capacity – family, friends, carers and service providers – to support people to make decisions without influence or coercion.

Supporting people with a guardianship order comes with serious responsibilities to ensure people are safe, whilst also promoting and supporting a person's human rights. I thank my staff for their work in balancing these challenges and for their dedication, professionalism and commitment to the people we support.



2022-23 Snapshot

A quick look at our achievements this past year



Guardianship Clients

- 549** new clients
- 2,224** clients assisted throughout the year
- 1,904** active clients on 30 June 2023
- 68%** of active clients had an NDIS plan
- 316** files closed
- 1,787** clients visited to check wellbeing, accommodation, services



Systemic Advocacy

- 17** written submissions from the Public Advocate



Dispute Resolution

- 48** new dispute resolution applications
- 47** finalised dispute resolution applications



Information Service

- 1,759** queries to the OPA information service



Education Services

- 40** education sessions delivered
- 1,414** people attended an education session
- 56,603** visits to the new OPA website launched in July 2022



Functions of the Public Advocate

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

Purpose and role

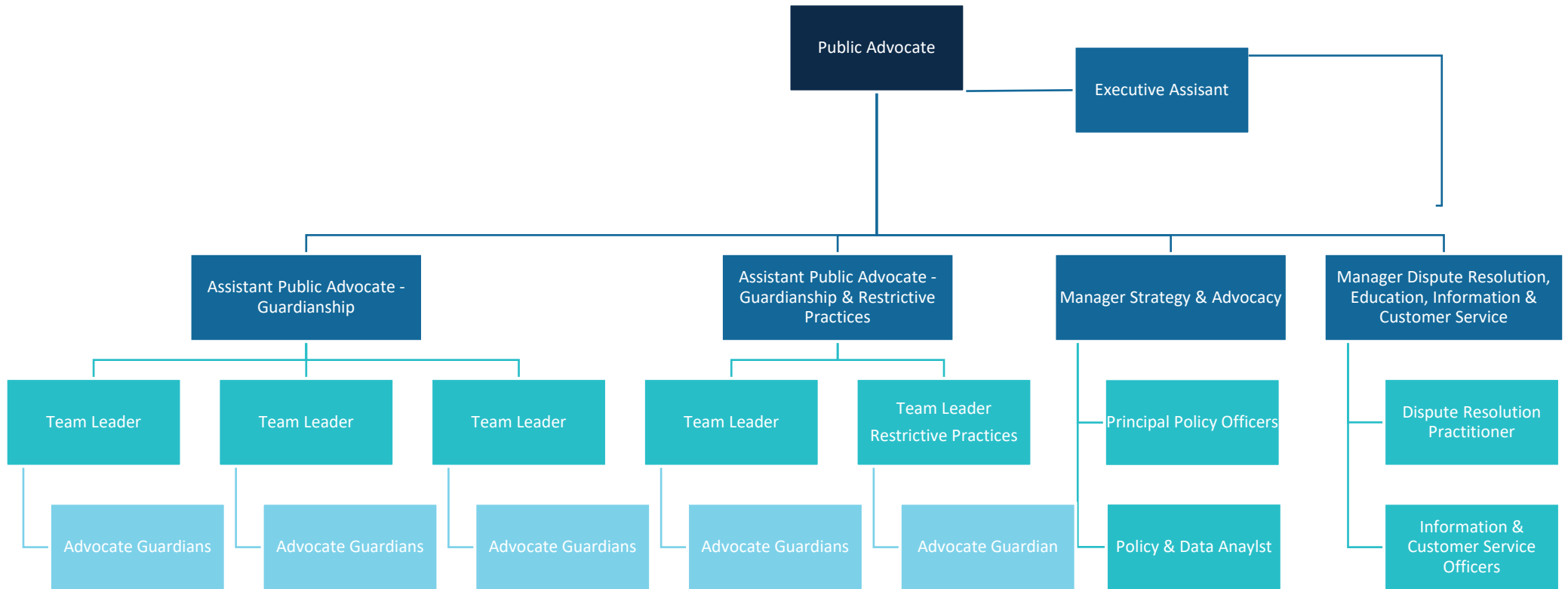
The Public Advocate is appointed under the [Guardianship and Administration Act 1993](#) (SA) to provide services that promote and protect the rights of people with a mental incapacity.

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 capacity 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 capacity 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
- acts as a guardian when appointed by the SACAT when there is no other suitable person to assist with decision-making and undertakes investigations as required by the SACAT.

Organisational chart



Key services

The OPA works with and on behalf of adults to provide the following services.

Guardianship (decision-making)

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

Investigating

The SACAT can direct the Public Advocate to investigate the affairs of a person who is the subject of an application for guardianship, administration, or who has had an advance care directive revoked by the SACAT. The Public Advocate provides a report to assist the SACAT to decide what it should do in relation to the person.

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, from members of the public to service providers and professionals, about issues that are, or could be, affecting a person with impaired decision-making capacity.

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) is due to report on its findings on 29 September 2023.

Since the commencement of the Royal Commission in April 2019, the Public Advocate has appeared multiple times to represent people under guardianship, and South Australians with impaired decision-making capacity. In June 2021, the Public Advocate appeared at Public Hearing 14: Preventing and responding to violence, abuse, neglect, and exploitation in disability services (South Australia). The Public Advocate's statement is available on the [OPA website](#).

The Public Advocate also represented South Australia in mid-2022 at two roundtables, which focused on a National Supported Decision-Making Framework and Best Practice Models in Guardianship. These roundtables preceded Public Hearing 30, held from 21--23 November 2022, which focused on guardianship and substituted and supported decision-making. The Public Advocate's submission on these topics is available on the [OPA website](#).

Information about the Royal Commission can be found on its [website](#).

Public Advocate clients and the criminal justice system

Clients of the Public Advocate continue to be over-represented in the criminal justice system, both as victims of crime and defendants in criminal proceedings. As victims of crime, Public Advocate clients are subject to abuse, physical and sexual assault, domestic and family violence, and exploitation at higher rates than the general population. As defendants and perpetrators of crime, Public Advocate clients with disability, poor mental-health and complex behaviours of concern are incarcerated at higher rates than the general population.

The OPA has established key relationships with South Australia Police (SAPOL), the Department for Correctional Services (DCS), Forensic Mental Health Services, Legal Services Commission (LSC), the Women's Legal Service South Australia, and the Aboriginal Legal Rights Movement. These relationships help the Public Advocate to support clients under guardianship who are involved in the criminal justice system.

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

Changes to witnessing requirements in 2015 saw the introduction of special arrangements to assist vulnerable persons involved in criminal proceedings. This included introduction of a Communication Partner Scheme for the purpose of assistance in proceedings for a person with complex communication needs.

The following categories of persons are currently approved to perform the role of a Communication Partner:

- Speech Pathologists with Certified Practising Speech Pathologist membership of Speech Pathology Australia
- Registered Occupational Therapists
- Psychologists with general registration status with the Psychology Board of Australia
- Developmental Educators with full membership of Developmental Educators Australia Incorporated

To date, uptake of this program has been low. Consequently, 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 capacity to give statements, testimony and evidence in criminal court proceedings.

Missing Person Reporting to South Australian Police

In 2022, the OPA established a centralised internal system to track and report on guardianship clients who are reported as missing persons to SAPOL. This system enables the Public Advocate to monitor the status of missing clients and escalate high-risk matters to appropriate agencies. In 2022-23, 131 Public Advocate clients were reported as missing persons to SAPOL.

Public Advocate clients can become missing persons from community support and care settings due to absconding behaviours. 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.

The assistance of SAPOL, which has powers to locate and return guardianship clients at risk in the community to safe environments under s32(4 and 6-7) of the [Guardianship and Administration Act 1993 \(SA\)](#), is critical to the safety of the Public Advocate clients. The majority of people are located within 1-2 days.

Restrictive practices

Restrictive practices are acts which can restrict a person's rights and freedom of movement to reduce the risk of physical harm to them or others arising from the person's behaviour. Restrictive practices must only be used as a last resort for people who have impaired decision-making capacity if there is no alternative way to reduce the risk of harm.

The Public Advocate advocates for the reduction and elimination of restrictive practices wherever possible. Where this is not possible, the Public Advocate advocates for their minimal use for people under guardianship who are NDIS participants and those who live in residential aged care. Restrictive practices authorisation regimes differ for NDIS participants and people in residential aged care and are detailed later in the report.

Family and domestic violence

In early 2022, the Public Advocate convened the *Public Advocate Clients and Domestic Family Violence Working Group*, bringing across-government collaboration to address issues for a small group of at-risk Public Advocate 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 the following agencies:

- SAPOL
- the Department of Human Service (DHS) Exceptional Needs Unit and Office for Women
- Department for Child Protection (DCP)
- Health and Recovery Trauma Safety Services (formerly Youth and Women’s Safety and Wellbeing Division)
- Adult Safeguarding Unit
- National Disability Insurance Agency (NDIA) and the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission
- Commissioner for Children and Young People
- Commissioner for Victims’ Rights
- Women’s Safety Services SA as the non-government peak representative.

The Public Advocate met with the Minister for Women and the Prevention of Domestic and Family Violence, the Hon Katrine Hildyard MP, in September 2022 and with the Minister for Human Services, the Hon Nat Cook MP, in November 2022, to discuss the work of the group.

The working group prepared a report to highlight to Ministers the unique issues facing these vulnerable people. In April this year the paper was provided to:

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

The report titled *Domestic Family Violence and Exploitation – Findings of the Public Advocate* is available on the [OPA website](#).

Case study: Family and domestic violence

Rebecca² is a woman who has an intellectual disability and is an NDIS participant. Her children have been removed from her care by the Department for Child Protection (DCP).

Rebecca has been under the guardianship of the Public Advocate for more than 10 years and was a client of the former Disability SA.

Rebecca has a history of accommodation instability and experiencing domestic, family and sexual violence. Currently, she is in a relationship and living with a man who is also under guardianship of the Public Advocate. They have a child together, who has been removed from their care.

As both Rebecca and her partner require NDIS-funded supports, their accommodation situation is complex. While Rebecca was eligible for priority 1 housing through the South Australian Housing Authority (SAHA) when she had children within her care, she is no longer eligible due to their removal.

Rebecca's current accommodation is through her partner's service provider. Therefore, if this relationship ends, she will lose her accommodation and become homeless. Rebecca and her partner receive drop-in NDIS-funded supports each day.

The OPA monitors Rebecca and her partner's situation closely and constantly assesses the risks she faces. Issues are referred to family violence services, SAPOL and specialist sexual violence services as required.

² Rebecca's true identity is protected.

Housing

Access to safe, suitable, affordable and stable housing continues to be a significant challenge for people under the guardianship of the Public Advocate. Some challenges are unique to NDIS participants and are discussed later in this report.

The OPA is working to improve housing options and security for clients through various forums and groups. Working groups convened by the Public Advocate have involved key agencies, including the Department for Health and Wellbeing (DHW), South Australian Housing Authority (SAHA), the NDIA, DHS Disability Services and DHS Exceptional Needs Unit.

On 1 March 2023, the Public Advocate hosted the *Housing for Exceptionally Complex Clients Workshop*, which was opened by Minister for Human Services, the Hon Nat Cook MP, and attended by the Chair of the SAHA. Guest speakers and representatives from the NDIA, SAHA and the Homelessness Alliances attended. The workshop laid foundations for continued collaboration to avoid homelessness for state clients.

Through the workshop a new interagency working group formed, meeting monthly to bring urgent collaborative effort to find accommodation pathways for individual state clients facing homelessness due to their exceptionally complex circumstances. This working group sits alongside the extant senior interagency working group, which focuses on systemic barriers and change.

In July 2022, the Public Advocate attended the *Hospital Discharge Roundtable* hosted by the Minister for Human Services, the Hon Nat Cook MP. The roundtable brought together key stakeholders from across government and non-government to explore the challenges for NDIS participants that result in hospital admissions and delays in securing appropriate accommodation and supports.

In December 2022, the Public Advocate made a submission to the review of the [Residential Tenancies Act 1995 \(SA\)](#), advocating for further protections for people under guardianship. The Public Advocate highlighted the risks these housing issues pose to vulnerable adults with disability in the appearance before the Royal Commission in June 2021.

Case study: Housing

Evan³ is a Public Advocate client in his 50s with complex physical and mental health needs including bipolar disorder (BD), Post-traumatic stress disorder (PTSD) and Autism. He is an NDIS participant supported by a registered service provider who provides both housing and SIL supports within the home.

The service provider advised the Public Advocate that it could no longer support Evan due to his behaviours of concern placing himself and others at risk of harm. Evan has a history of trauma and abuse and makes allegations against support staff on a regular basis. Other behaviours of concern include property damage, physical aggression against staff and verbal aggression.

The service provider exhausted its pool of staff, with several reportedly on Workcover due to injuries sustained through Evan's behaviours of concern. The staffing ratio required for Evan is 3:1 active overnight 24/7.

Evan remains in hospital, as he requires an accessible Specialist Disability Accommodation (SDA) robust property. The OPA is working with Evan's Specialist Support Coordinator, SA Health and DHS to find a solution.

Regency Green

Regency Green commenced in July 2022 as a transitional care and support service to facilitate hospital bed flow. It enables clients who are medically ready for discharge to be moved into a supported setting while more permanent accommodation is sourced. This avoids extended and unnecessary hospital stays.

The service is delivered by Community Living Options (CLO) for NDIS participants with a psychosocial disability, including personality disorder. Regency Green has a support model of one carer to three participants and is the result of collaboration between CLO and the Local Health Networks (supported by DHW).

The OPA worked closely with key stakeholders to facilitate the hospital discharge of Public Advocate clients through transition to Regency Green. Since commencement, 29 participants have been discharged, 15 of whom are under guardianship of the Public Advocate. As of 30 June 2023, nine of the 16 people residing in Regency Green were Public Advocate clients.

³ Evan's true identity is protected.

Supported residential facilities

Supported residential facilities (SRFs) remain an accommodation option for some Public Advocate clients, often those with a psychosocial disability.

SRFs are privately owned and provide congregate accommodation, which is regulated under the [Supported Residential Facilities Act 1992](#) (SA) (the Act). SRFs do not receive government subsidies and, as such, people living in them must pay for their care directly, or via their NDIS plan.

The Public Advocate understands that DHS is examining future options for regulating SRFs through a review of the Act and will advocate for stronger safeguards and protections for their residents.



Decision-making

Guardianship

The Public Advocate is appointed as a guardian for a person who has impaired decision-making capacity (or 'mental incapacity' under the Act) by the SACAT 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 under guardianship 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 and access to services.

Client profile

1,904 clients were under guardianship of the Public Advocate on 30 June 2023.

- **Gender identity**⁴: 1,080 clients (57%) were male and 824 (43%) were female
- **NDIS participants**: 1,288 clients (68%) had an NDIS plan
- **Age**: 705 clients (37%) were 65-years-of-age or older and 1,199 (63%) were under 65
- **First Nations People**: 205 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 population⁵.

⁴ The Public Advocate is seeking enhancements to the client information recording system to enable non-binary gender information recording

⁵ 2021 census of population and housing (Australian Bureau of Statistics: [link](#))

Age

56 years was the median age for clients under guardianship of the Public Advocate on 30 June 2023, which is higher than the median of 49 for all South Australians aged 18 years or older⁶.

	All Clients		Aboriginal Clients	Non-Aboriginal Clients
0-39 years	567 (29.8%)	0-39 years	113 (19.9%)	454 (80.1%)
40-64 years	632 (33.2%)	40-64 years	75 (11.9%)	557 (88.1%)
65+ years	705 (37.0%)	65+ years	17 (2.4%)	688 (97.6%)

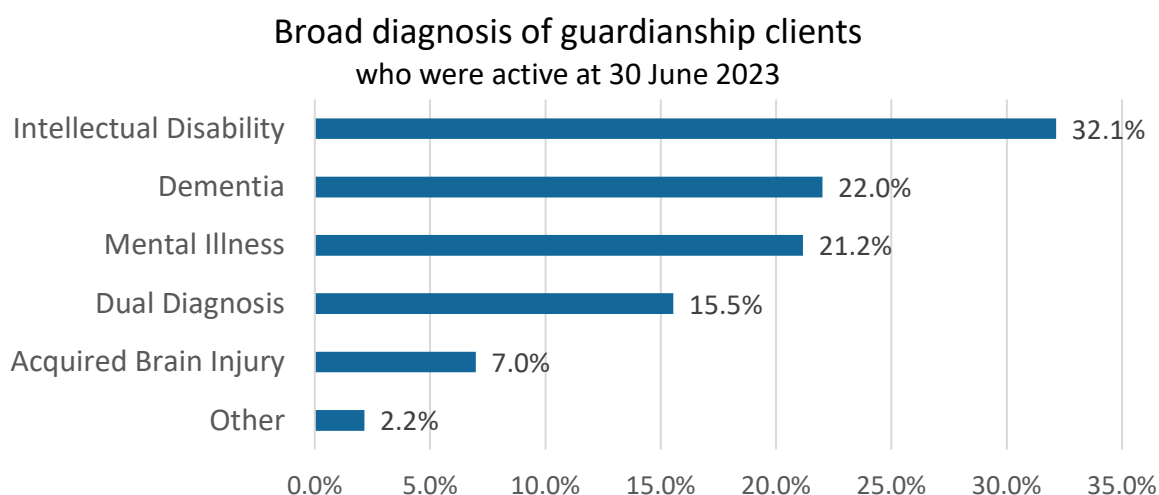
Aboriginal people are further over-represented among clients under public guardianship who are under 40 years-of-age (19.9%). Over-representation drops, but still exists, for Aboriginal clients over 65-years-of-age (8.3%), reflecting the lower life expectancy of Aboriginal people.

Diagnoses

75.3% of the clients under guardianship of the Public Advocate on 30 June 2023 were diagnosed with a decision-making impairment falling within three primary categories:

- intellectual disability (32.1%)
- dementia (22%)
- or mental illness (21.2%).

The majority of the remaining 24.7% 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:

⁶ Australian Bureau of Statistics, 2021 Census DataPack for South Australia ([link](#))

- Lower rate of dementia (7.8% for Aboriginal clients), likely reflecting the lower life expectancy of Aboriginal people
- Higher rate of intellectual disability (42% for Aboriginal clients).

Accommodation

Most clients under guardianship of the Public Advocate reside in disability-specific accommodation, including supported single-living arrangements and groups homes, or residential aged care facilities.

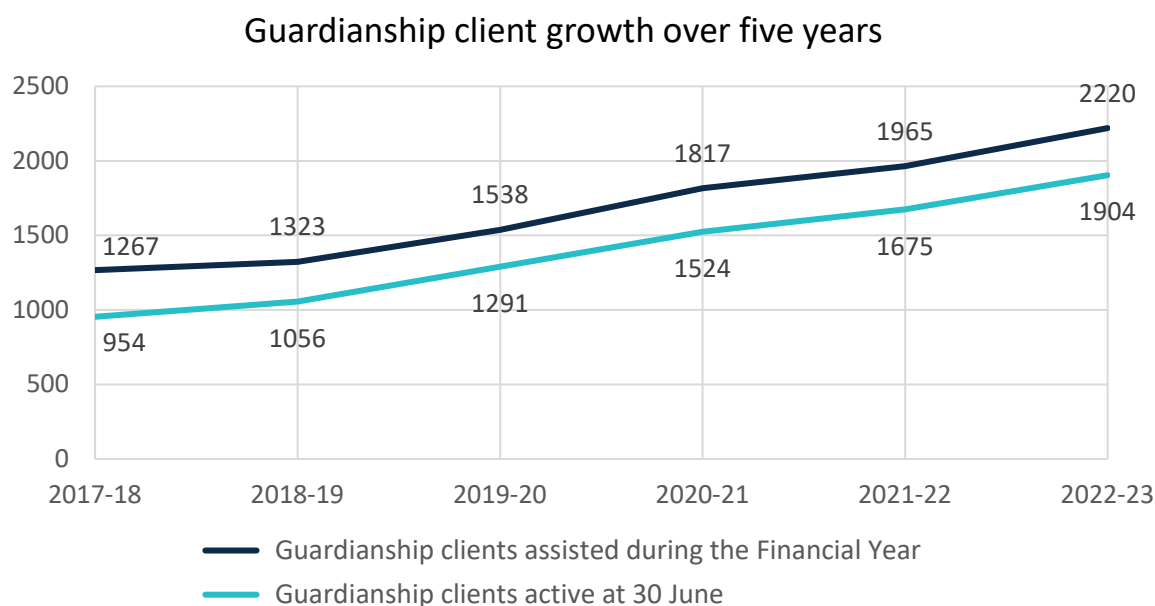
Table 1: Accommodation arrangements for guardianship clients on 30 June 2023

Accommodation	2022-23	% ↑/↓ ⁷
Disability-specific accommodation	35%	↑4%
Residential aged care facility	25%	↑1%
Public, private or community rental accommodation	15%	↓1%
Supported residential facility	6%	↑1%
Hospital or a rehabilitation centre	5%	↓3%
Family/partner's home or friend's home	5%	-
Their own home	4%	↓1%
Mental health facility	3%	↓1%
Forensic service or prison	1%	-
No fixed place of abode	1%	-

⁷ Per cent change over 12-months from 30 June 2022

Growth in guardianship

The number of people under the Public Advocate's guardianship is increasing at a growing rate and rose 13.7% (from 1,675 to 1,904) during the 2022-23 financial year.



Guardianship client numbers have increased by 100% over the past five years, rising from 954 in June 2018 to 1,904 in June 2023.

The increase in appointments reflects the impact of:

- 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 decision⁸ in May 2019 regarding the detention of people in residential aged care facilities 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
- an increased number of older people affected by dementia or stroke.

⁸ 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 2022-23:

- the OPA attended 740 hearings for applications for guardianship⁹
 - applications increased by 14% compared with the previous financial year
- the Public Advocate was appointed as guardian for 549 people (74%) with impaired decision-making capacity
 - appointments increased by 18% compared with the previous year.

	2021–22	2022-23	% ↑/↓
SACAT hearings for guardianship applications [^]	650	740	↑14%
New guardianship appointments ^{^^}	467	549	↑18%

[^] where the Public Advocate is nominated or considered likely to be appointed

^{^^} where the Public Advocate is appointed guardian

Closed matters

The OPA closed 316 guardianship matters during 2022-23, representing 14% of all guardianship matters that were active at any point. New appointments (549) exceeded matter closures by 233.¹⁰

Matters are closed for a number of reasons, including:

- clients passing away (47%)
- SACAT revoking guardianship orders (19%)
- appointment of a private guardian (14%)
- guardianship orders expiring (10%)
- SACAT dismissal of urgent temporary guardianship orders (5%).

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:

⁹ This figure is neither a full count of all applications that result in the Public Advocate's appointment as guardian, nor a count of all hearings attended by the OPA. Due to the nature and circumstances of some applications and hearings, the Public Advocate may be appointed without OPA engagement.

¹⁰ This does not precisely reconcile with the increase in client numbers during 2022-23 due to retroactive data recording impacting previously reported numbers.

- people who are NDIS participants, because NDIS plans and services are regularly reviewed and changed, and a guardian must make NDIS-related decisions
- 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 316 guardianship matters that were closed in 2022-23, 68 matters (22%) were in place for over three years, and 149 matters (47%) were in place for less than one year.

Table 3: Length of closed guardianship matters 2022-23

Length of guardianship matter	2021–22 ¹¹	2022-23
0 – < 12 months	151	149
1 year – < 2 years	61	63
2 – < 3 years	33	36
3+ years	67	68
Total closed matters	312	316

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](#).

¹¹ 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 capacity where no other appropriate person can be appointed as guardian. These decisions relate to health care, accommodation, services and supports and lifestyle.

In 2022-23, the Public Advocate and OPA staff made the following decisions for people under guardianship:

Table 4: Decisions made for guardianship clients during 2022-23

Decisions	2022-23 ¹²
Health care	1,917
Accommodation	1,199
Service / support	771
Lifestyle	649
Access	561
Total decisions	5,097

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. At times these calls may require an application to the SACAT for orders. Calls to this service are primarily from health practitioners seeking urgent orders, or consent for medical treatment for people under the guardianship of the Public Advocate.

In 2022-23, the OPA responded to 1,285 after-hours calls, a decrease of 117 calls (8%) from the previous year, with a monthly average of 107 after-hours calls. The peak call periods were 5pm to 9pm on all days, and 9am to 12pm on weekends and public holidays.

During 2022-23, data recording for the after-hours service was enhanced to capture the nature and outcomes of calls. From January to June 2023:

- the OPA responded to 626 after-hours calls
- the OPA made 151 urgent decisions for clients
 - a rate of one decision for every four calls
 - most decisions (109 or 72%) were health related, and the remaining decisions were mostly access or lifestyle related (13 or 9% each)

¹² Data recording enhancements during 2022-23 identified discrepancies in decision breakdown reporting that resulted in some double counting in previous Annual Reports.

- calls that did not require an urgent decision either resulted in an urgent notification of a serious matter to the Public Advocate (31 or 21%), were regarding an out-of-hours SACAT hearing (22 or 15%) or were not appropriate for the after-hours service.

Investigations

The SACAT can direct the Public Advocate to investigate and provide a written report of findings in response to applications the SACAT has received. The report provides a balanced, concise overview of the circumstances of the person associated with the application.

OPA 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:

- 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 2022-23 was similar to the previous year.

Table 5: Investigations for the SACAT in 2022-23

Investigations	2021-22	2022-23
OPA investigations undertaken for the SACAT	24	23

Litigation guardianship

A court may appoint the Public Advocate as Litigation Guardian to instruct a legal representative for a person with impaired decision-making capacity, where no other appropriate person can be appointed.

A Litigation Guardian's role is to support a person to articulate instructions to their lawyer or, where this is not possible, to provide substitute instructions on the person's behalf based on legal advice.

The OPA received 11 requests to become Litigation Guardian and seven appointments were made, which is four more than the previous year. The remaining requests were either resolved or fell outside the scope of the OPA's jurisdiction/responsibilities.

Table 6: Litigation Guardianship 2022-23

Litigation Guardianship	2021-22	2022-23
Request for Litigation Guardian	11	11
Appointments	3	7

Complaints and decision review requests

In 2022-23, the OPA responded to 42 complaints or requests for the OPA to review decisions, 16 ministerial enquiries and one Freedom of Information application. These requests related to decisions made by the OPA staff, communication concerns, conflict amongst interested parties, or other matters.

Complaints and decision review requests equated to 1.9% of the 2,220 clients assisted in 2022-23 (1.5%). Ministerial enquiries equated to 0.7% of clients (from 1.5% in 2021-22).

Table 7: Litigation Guardianship 2022-23

Complaints and decision review requests	2021-22	2022-23
Complaints and decision reviews	30	42
Ministerial enquiries	30	16
Freedom of Information requests	2	1

Warrants

A warrant is a written authority by the SACAT to direct a person under section 69 of the [*Guardianship and Administration Act 1993 \(SA\)*](#) to present to a psychiatric, psychological or medical professional for examination and assessment regarding their mental capacity and to submit a report to the SACAT.

There were no applications for a warrant made in 2022-23.



Resolving and mediating

Dispute resolution

The OPA Dispute Resolution Service (DRS) has legislative authority to resolve disputes under the [Advance Care Directives Act 2013 \(SA\)](#) and the [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#). To fulfil its responsibilities in accordance with the legislation, the OPA employs qualified mediators who have experience working with people in complex and conflictual situations.

The Public Advocate may, on application from an eligible person, offer preliminary assistance, resolve disputes or mediate in the following scenarios:

- disputes in relation to an advance care directive (ACD) that a person has made under the [Advance Care Directives Act 2013 \(SA\)](#)
- disputes about consent to medical or dental treatment under the [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#) (including disputes involving children under 16 years of age)
- disputes about a decision, proposed decision or decision-maker under both Acts.

An eligible person is any person who satisfies the Public Advocate that they have a proper interest in a particular matter relating to the advance care directive or the consent to medical and/or dental treatment.

Further information about the Dispute Resolution Service is available on the [OPA website](#).

Advance care directives

Individuals complete advance care planning to ensure their decisions and wishes are recorded and will be acted upon should they lose the ability to make or communicate decisions and wishes in the future. An ACD is a written legal document that helps give people control over what happens to them, even if their future decision-making or ability to communicate is impaired.

The [Advance Care Directives Act 2013 \(SA\)](#) allows a person over 18 years of age with decision-making capacity to make an ACD. The ACD records their wishes, preferences and instructions for their future health care, living arrangements and personal matters (it does not deal with financial matters).

They can also appoint one or more substitute decision-maker(s) (SDM), who can make a decision for them if they are unable to make a particular decision for themselves. An SDM should make decisions that reflect the preferences, values and beliefs of the person who made the ACD.

A review of the [Advance Care Directives Act 2013 \(SA\)](#) was undertaken in 2019. The Government of South Australia supported 22 of the 29 recommendations. The review noted the low uptake of ACDs in the community and, in response, the government established the Advance Care Planning Oversight Group to provide advice to the Minister for Health and Wellbeing on measures to improve uptake. The Public Advocate is a member of this group, which is working to implement the recommendations as well as supporting the development of non-statutory directives for completion by people who lack decision-making capacity.

The Public Advocate is also a member of the ‘ACD and End of Life Collaborative Projects Forum’, coordinated by the Office for Ageing Well (OAW), SA Health. The forum unites local councils and other OAW-funded organisations to implement the review recommendations and enable shared learnings, models and initiatives across the projects.

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

Also, in partnership with OAW, the OPA is undertaking the ‘Substitute Decision-Maker Toolkit Project’. This toolkit will provide SDMs with helpful tools, information, and resources to undertake this important role when appointed under an ACD. This will assist those appointing an SDM under an ACD to have confidence that their wishes will be upheld.

Work on the project from May 2022 to July 2023 produced resources including a guide ‘Now you are a substitute decision-maker’, a fact sheet for SDMs, and a series of short videos explaining ACDs and the substitute decision-making role. It is expected that the resources will be available in September 2023.

Further information about the OPA’s Substitute Decision-Making Toolkit Project is available [on the OPA website](#).

Consent to Medical Treatment and Palliative Care Act 1995

A person who is unable to provide consent to medical or dental treatment themselves cannot receive treatment without another form of valid consent. The *Consent to Medical Treatment and Palliative Care Act 1995 (SA)* (the Consent Act) specifies who can provide this consent when a person cannot give their own consent, including in medical emergencies.

In addition, the Consent Act authorises the Public Advocate to resolve disputes related to consent to medical, dental and healthcare treatment.

When a person is unable to give their consent for a particular treatment, then consent is required from either a substitute decision-maker under an ACD, or a 'person responsible' under the Consent Act.

A 'person responsible' is defined in section 14 of the Consent Act as a person who is available and willing to make the decision, 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).

In many circumstances the Consent Act negates the need for the SACAT to make a guardianship order for healthcare. In addition, the DRS helps friends and families to understand their rights and obligations regarding consent to medical treatment and assists to resolve disputes that may arise.

Case study: Consent to medical treatment

Amy¹³ was admitted to the hospital following a motor vehicle accident. Amy sustained fractured limbs and head injuries resulting in a traumatic brain injury (TBI). The treating team at the hospital deemed that she did not have capacity to consent to her own medical treatment.

Amy's son, Simon, had a close relationship with her, and was her Attorney under an Enduring Power of Attorney. She had not completed an advance care directive. The *Consent to Medical Treatment and Palliative Care Act 1995 (SA)* states that Simon could make medical decisions for her as her 'person responsible': a relative who has a close and continuing relationship with her.

The hospital Social Worker contacted the OPA's DRS because there was a conflict between the treating team's recommendations for medication management and what Simon knew would be in line with his mother's wishes. The hospital thought a guardian may need to be appointed.

The DRS spoke to Simon, the Social Worker and the medical treatment team, and provided information about the Consent Act and the role of a person responsible. In particular, the DRS addressed the obligation of a person responsible to reflect the decision that the patient would have made if they were capable of making the decision.

Following those conversations, the Social Worker advised the DRS that they had sought consent from Simon for the medical decisions, and the dispute was now resolved. There was no need for a guardian to be appointed, and Amy received only the treatment that her son believed she would have consented to herself.

¹³ Amy's true identity is protected.

DRS applications

The DRS receives applications from family members who are in conflict about decisions concerning a person with impaired decision-making capacity. Circumstances may include:

- people being prevented from visiting a loved one
- disagreements about accommodation decisions
- concerns or disagreement about decisions made by substitute decision-makers appointed under an ACD.

The DRS assists families experiencing conflict to resolve disputes and repair fractured relationships. Where appropriate, the DRS encourages families to avoid more formal SACAT processes that may result in the revocation of family members as substitute decision-makers and appointment of the Public Advocate as guardian.

The DRS receives applications for dispute resolution from a broad spectrum of the South Australian community including the SACAT (as a referral), healthcare and medical practitioners (doctors, nurses and social workers), aged care facilities, service providers, and friends and family members.

In 2021-22, a high number of applications were made to the DRS. This increase can be attributed to disputes about health care matters relating to COVID-19 including vaccination, lock downs and access in residential aged care facilities. The pandemic's influence on DRS application eased during 2022-23.

Table 8: DRS applications 2022-23

DRS applications	2021-22	2022-23
Family and friends	51	36
Healthcare professionals	4	4
Service providers	1	2
Aged care facility	6	2
Adult Safeguarding Unit	3	0
Legal representative	1	0
Person themselves	0	0
SACAT member	5	4
Advocacy agency	1	0
Uniting Communities	1	0
Total applications	73	48

Finalised DRS matters

The DRS has developed a model of dispute resolution including mediation that is rights-based and person-centred, enabling participants to identify the issues in dispute and develop resolution options.

The rights of the person at the centre of the dispute are of paramount importance, ensuring that their voice is heard, especially if they are not able to participate directly in the resolution process, for example, because of their health or impaired decision-making capacity.

Table 9: DRS finalised matters 2022-23

Finalised DRS matters	2021–22	2022-23
Resolved	47	20
No further action	16	10
Referred to the SACAT	6	6
Referred to Adult Safeguarding Unit	0	0
Application withdrawn	6	8
Client deceased	4	3
Total	79	47

Within the 47 matters finalised during 2022-23, the DRS assisted 161 interested parties. Nine matters remained open on 30 June 2023.

No further action could be taken within 10 matters, where parties were not willing to mediate, there was alleged abuse or neglect and/or where the matter was outside of the scope of the legislation. Three clients passed away during the DRS process.

The DRS achieves a high rate of success when mediating matters. The DRS assisted 31 participants through six formal mediations, five of which were resolved with a full mediated agreement. The sixth mediation reached partial agreement and an application was made to the SACAT to appoint a guardian to resolve the outstanding issues.

Preliminary assistance

Although mediation is a helpful tool for dispute resolution, there are many occasions where it is either not appropriate, not possible or not necessary to reach a conclusion. At these times, the ACD Act allows the OPA to provide preliminary assistance to interested parties, including by:

- ensuring that the parties to the matter are fully aware of their rights and obligations
- identifying the issues in dispute (if any)
- canvassing options that may obviate the need for further proceedings
- where appropriate, facilitating full and open communication between the parties.

The DRS has noted an increase over the last two years in the number of matters resolved pursuant to section 45(1) of the ACD Act, under the category of 'preliminary assistance'. Of the 20 matters resolved, a total of 14 cases (70%) were resolved without attendance at a formal mediation process, highlighting the value of preliminary assistance.

Matters resolved without a tribunal hearing are 'triaged' by the DRS providing information and education, clarifying points of disagreement, and assisting the parties to access options other than a SACAT application.

Case study: Advance care directives

Dale¹⁴ loved his four children dearly and was determined that they all be involved in decision-making for him if he was unable to make his own decisions. He made his advance care directive, appointing all four children as substitute decision-makers, and instructing that they make all decisions together.

When two of his children became concerned about the behaviour of a neighbour, who visited regularly and spent long periods of time with their father, they moved to restrict the neighbour's access. Dale's other two children disagreed with this decision.

The OPA DRS initially provided information to all four substitute decision-makers about their roles under the [Advance Care Directives Act 2013](#) (SA). Over 12 months, the family attended three mediation sessions (Dale attended two sessions and participated in the discussions), and the DRS mediator was able to help the family to work through the difficult access decisions and Dale's eventual relocation to an aged care facility.

This meant that the advance care directive could be maintained and Dale's rights could be upheld, as well as his wish for his children to be his decision-makers.

Dale's children became more skilled at navigating their conflict, and their improved communication led to shared understanding about the increasingly dangerous situation with his neighbour.

This enabled them to make the lifestyle decision that Dale would have made, with his safety and protection in mind. Their restored relationship meant that in the days leading up to Dale's passing, his children were all together at his bedside, and his greatest wish – to have all his children around him – was fulfilled.

¹⁴ Dale's true identity is protected.



Informing

The OPA provides information to community members, health professionals and service providers regarding adult safeguarding, the SACAT application process, decision-making capacity, guardianship and administration orders and advance care directives.

Information is provided in three main ways:

- the Office of the Public Advocate telephone information service (1800 066 969)
- face-to-face [information sessions](#)
- the Office of the Public Advocate [website](#).

Information service statistics

In 2022-23, the OPA recorded 1,759 requests for information on a wide range of issues. The most common requests for information related to:

- SACAT application process (239 or 14%)
- advanced care directives (211 or 12%)
- guardianship matters (193 or 11%)
- administration matters (135 or 8%).

Information sessions

The OPA delivers information to the community and external stakeholders about the:

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

This year the information service has seen a significant rise in requests for information sessions with an increased interest in the areas of advance care directives, planning ahead, the role of the Public Advocate, the role of a guardian, and guardianship and administration.

Each year the OPA conducts a series of information sessions for second-year and fourth-year medical students from Flinders University. These sessions explore the above-named legislation and how they will apply in the student's chosen field of practice.

This year, the OPA conducted a series of information sessions for the Social Work team at the Flinders Medical Centre, including information about informal arrangements, guardianship, special powers, and restrictive practices.

The OPA was invited to speak at the induction of the Mental Health Allied Health Professionals to the newly appointed Social Workers about decision-making capacity and consent to healthcare and medical treatment.

The OPA information services also provides information to our stakeholders and the agencies that the OPA works closely with. In 2022-23, the OPA presented information sessions to staff of the:

- South Australian Housing Authority (SAHA)
- DHW Adult Safeguarding Unit (ASU)
- DHS Exceptional Needs Unit (ENU)
- SAPOL-led Multi-Agency Protection Service (MAPS)
- NDIS Quality and Safeguards Commission’s complaints unit
- Public Trustee (PT)
- Superintendents of the South Australian Police (SAPOL).

The OPA information team was also a guest speaker on Radio Italiano in Plan Ahead Week 2022 to talk about advance care directives.

Table 10: Information sessions 2022-23

Information session	2021–22	2022-23
Sessions requested	42	48
Sessions delivered	36	40
Participants	891	1,414

New website

On 8 July 2022, the OPA launched a new publicly facing website as part of its commitment to provide current and accessible information to the South Australian community. The new website complies with the South Australian Government’s accessibility policy and meets Web Content Accessibility Guidelines.

It is compatible with most assistive technologies including screen magnifiers, screen readers and speech recognition tools. The design aims to better meet the needs of all users, particularly those with cognitive or intellectual disabilities, and users with low vision.

The new website will assist people with impaired decision-making capacity and their carers to access information, which will support them to make important decisions about their lives.

Since the launch, there have been 56,603 visits to the new website. The new 'plain English' fact sheets were the most visited page (after the homepage) with 3,423 views.

The new website has correlated with a reduction in the number of calls to the information service, which may be attributable to the new fact sheets.

The new OPA website can be found at <https://www.opa.sa.gov.au>.

Webinar series launch

As part of Plan Ahead Week in September 2022, the OPA Information Service ventured into new territory, planning and delivering its first OPA webinar series. This focused on providing information about ACDs and the role of an SDM appointed under an ACD. Participant feedback was positive, enabling the OPA to use learnings for planned future webinars.

In 2023-24, the OPA intends to increase its digital presence by pre-recording webinars for stakeholders, such as aged care facilities and others who support Public Advocate clients. This will provide continual access to regularly updated information for professional staff working in these fields, which they can use for staff induction and training to meet stakeholder needs.



Advocacy and promoting rights

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

This involves highlighting issues that impact people who need help with decision-making, such as reforms in the disability and mental health sectors, aged care and housing systems. These functions are performed under section 21 (1) (a-h) of the [Guardianship and Administration Act 1993 \(SA\)](#).

The Public Advocate makes recommendations to the Attorney-General, and to ministers with portfolio responsibilities in health, disability, mental health, housing and aged care. It includes reporting on areas of unmet need, and providing ideas for improvement of programs, legislation, systems and processes.

Systemic advocacy

In 2022-23, the Public Advocate continued to advocate for systemic improvements in the way that guardianship clients access disability services. Part 2 section 21 (3) of the [Guardianship and Administration Act 1993 \(SA\)](#) specifies that the Public Advocate may establish committees for the purpose of providing advice in relation to the performance of any of the Public Advocate's functions.

The Public Advocate continues to convene the OPA Disability Forum, Housing for Exceptionally Complex Clients Working Group and the Public Advocate Clients and Domestic Family Violence Working Group.

Membership of the working groups includes representatives from a range of stakeholders from state and commonwealth government agencies, and non-government sectors. They work to provide a collaborative approach to ensure the best opportunities for Public Advocate clients to access the services they require.

These meetings recognise the breadth and complexity of the needs of Public Advocate clients, who are often engaged with multiple service systems. They foster a positive and proactive commitment to supporting some of the most complex and vulnerable South Australians, who are often Public Advocate clients.

Topics covered at these meetings included:

- information sharing, stakeholder updates and identification of Public Advocate clients
- challenges and market issues in the NDIS

- new and emerging initiatives
- case study analysis
- education sessions for the sector
- housing and tenancy matters for Public Advocate clients
- conflict of interest issues when a Public Advocate client's housing, supports and support coordination all come from the one service provider, particularly in thin markets
- the identification of further opportunities for collaboration outside of the meetings.

In 2022-23, the Public Advocate wrote submissions on a range of topics. A comprehensive list of these submissions can be found later in this report and submissions are generally made available on the OPA website. In 2022-23, the Public Advocate wrote submissions relating to the legislation below.

Review of the *Disability Inclusion Act 2018*

The *Disability Inclusion Act 2018* (SA) (DI Act) was made with the initial purpose of achieving equal access to facilities, environments, and inclusion in the social life of the community, for all people with disability, including older people and children. It was subsequently amended to include regimes for NDIS worker screening and authorisation of restrictive practices implemented by NDIS providers. In accordance with the provisions of the Act, a review to assess its effectiveness was commenced in 2022.

As the guardian for approximately 1,900 people with impaired decision-making capacity, the Public Advocate was pleased to make a submission to this review. The Public Advocate submitted that, to be truly effective, the original intent of the Act required strengthening. This would be achieved through a range of measures to focus on the importance of environmental, physical, and cultural attitudes towards people with disability with a particular focus on inclusion principles and quality Disability Access and Inclusion Plans.

The Public Advocate submitted that the original intent of the Act had been overshadowed by the screening and restrictive practices regimes, which ideally should be captured in separate stand-alone legislation covering these and any other outstanding responsibilities of the state government in relation to the NDIS. In total, the Public Advocate made 14 recommendations to the review aimed at achieving these outcomes of inclusion.

Review of the *Ageing and Adult Safeguarding Act 1995*

The *Ageing and Adult Safeguarding Act 1995* (SA) (AAS Act) is an Act to safeguard the rights and prevent the abuse of ageing and vulnerable adults through the Adult Safeguarding Unit (ASU). A review was commenced in 2022 to assess the effectiveness of the AAS Act, its functions and powers, through extensive consultation with stakeholders, including those with lived experience, and subject experts.

The Public Advocate made recommendations that the guiding principles should align with the United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD) and that the scope of the ASU should extend to any adult at risk of abuse or neglect, regardless of age or disability.

The Public Advocate also recommended strengthening the language in multiple places to recognise and appropriately deal with complex interface issues and individual circumstances, backed-up by development of individual 'safeguarding plans'. The Public Advocate also stressed that access to supported decision-making should be available to everyone when consenting to an action of the ASU.

Review of the *Mental Health Act 2009*

The *Mental Health Act 2009* (SA) (MHA) is an Act to make provision for the treatment, care and rehabilitation of persons with severe mental illness, with the goal of bringing about their recovery as far as is possible. It also provides for the making of orders for community or inpatient treatment, where required, and to protect the freedom and legal rights of persons with mental illness.

The Public Advocate made a submission to the review in 2022 aimed at supporting the promotion of self-determination for South Australians with a mental illness and exploring the intersection of the MHA with the functions of the Public Advocate. The Public Advocate's submission recognised that there are a small number of people who are acutely unwell and have impaired capacity to understand their treatment needs.

Given the MHA sets out circumstances where treatment can be provided without consent, the Public Advocate emphasised the importance of protecting patient rights and ensuring effective safeguards are in place.

In particular, the Public Advocate recommended improvements to definitions, referrals, pathways, and access to supported decision-making for patients. It recommended examining the interaction of the MHA with other acts, and that the process for authorising the use of force in relation to electro convulsive therapy be managed separately from guardianship and substitute decision-making schemes.

The Public Advocate also highlighted the importance of aligning concepts and practices relating to the use of restrictive practices with those used in other pieces of legislation. Many of the Public Advocate's clients have a mental illness or psychosocial disability, often with other comorbidities, trauma and issues such as social isolation or homelessness. It is, therefore, imperative that the MHA addresses the needs of these people and supports their autonomy.

Review of the *Residential Tenancies Act 1995*

The *Residential Tenancies Act 1995* (SA) (RTA) is the primary piece of legislation that regulates the relationship of landlord and tenant under residential tenancy agreements. It specifies rights and obligations with respect to duration of tenancy, rent, conditions of tenancy, and dispute resolution, amongst others. The RTA is the main source of consumer protections for renters in SA.

The RTA was last reviewed in 2014. The 2022 review was initiated in recognition of changing housing market conditions and aimed to update South Australian rental laws to better meet the needs of today's rental housing market.

The Public Advocate works with some of the most vulnerable adults in South Australia, many of whom have high and complex support needs. Public Advocate clients experience higher levels of social disadvantage and face difficulties in securing and sustaining appropriate accommodation in the rental market.

Since the introduction of the NDIS, new housing models are making regulation even more complex, raising questions about the adequacy of tenancy protection. People who find themselves in these situations can be highly vulnerable to exploitation by some service providers through practices like combined tenancy and support arrangements.

With this background in mind, the Public Advocate made seven recommendations to better protect the rights of Public Advocate clients to have safe, secure, affordable housing.

Recommendations focused on:

- extending the period of notice required to end a tenancy
- simplification of the RTA to capture all arrangements where rent is paid for the right to reside
- co-review of other acts that regulate shared tenancy arrangements, which are often the only available options for Public Advocate clients.

Of particular importance to the Public Advocate was recommending amendments to the RTA to regulate the activity of Specialist Disability Accommodation (SDA) and Supported Independent Living (SIL) providers who become landlords. This was aimed at ensuring people with disability are afforded security of tenure, transparent rent and other expenses. The OPA submitted that this should include consistent, transparent and separate agreements for tenancy, support services and living expenses.

National Disability Insurance Scheme

National Disability Insurance Scheme and Public Advocate clients

2023 marks 10 years of the operation of the NDIS, with South Australia reaching full scheme in July 2019. The Public Advocate has made submissions to the Review of the NDIS, which is currently underway, advocating for Public Advocate clients and South Australian adults with impaired decision-making capacity more broadly. The Public Advocate looks forward to the final report from this review, which is due later in 2023.

The NDIS has benefited Public Advocate clients and now generally sees them receiving more appropriate funding to support their disability related needs. This has eventuated through strong advocacy from OPA staff. The lack of case management, or a like service within the NDIS, has significantly impacted the time and resource requirements within the office to support Public Advocate clients who are NDIS participants. Additional guardianship staff, and roles such as the Guardianship Liaison Officers, have been established to support the office in the increased work and administrivia generated by the NDIS.

The Public Advocate's role is critical in supporting and advocating for guardianship clients who are participants of the NDIS in ensuring that their NDIS plans provide adequately for any required services and supports. The Public Advocate assumes that every client under the age of 65 should be an NDIS participant and, if they are not, their eligibility should be tested.

As of 30 June 2023:

- a total of 1,288 clients (68%) had an approved plan, comprising 1,155 clients under 65 years of age and 133 clients over 65 years of age
- a small number of Public Advocate clients aged under 65 years of age (44 people) were not identified as NDIS participants, either because they were new to the Public Advocate or had access issues, which OPA staff were investigating.

The OPA continues to work with the NDIA towards an agreement for information exchange under the Memorandum of Understanding for the Exchange of Information between the NDIA and State Government Agencies. The head agreement was signed by DHS in 2022 on behalf of all South Australian state government agencies. The signing of the Attorney-General's Department schedule (which includes the Public Advocate and Public Trustee) under the head agreement is currently on hold as the NDIA seeks advice around the interoperability between state guardianship legislation and the [NDIS Act 2013](#) (Cth).

Currently, matching between Public Advocate and NDIA data is undertaken by DHS. This will cease once the schedule is signed and suitable data management provisions are in place.

The OPA regularly updates its suite of NDIS policies, procedures and supporting documents. These guide staff in ensuring that Public Advocate clients who are NDIS participants are

afforded the best opportunities and highest level of safeguarding when accessing the NDIS and funded services.

The Public Advocate and OPA staff meet regularly with NDIA representatives to escalate client matters that require urgent NDIA attention, and to discuss systemic issues for Public Advocate clients. Additionally, the Public Advocate coordinated and participated in regular NDIS-related meetings, stakeholder forums and workshops, including:

- OPA Disability Forum
- NDIS interjurisdictional meetings of public guardians and justice agencies
- NDIA community engagement fortnightly agency update.

Restrictive practice authorisations for NDIS participants in South Australia

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.

This scheme makes authorisation of restrictive practices independent from the role of a guardian and aims to provide better oversight and monitoring of restrictive practices in the state. Under this scheme, NDIS service providers can authorise certain restrictive practices in NDIS settings, while a Senior Authorising Officer (SAO) authorises more serious restrictive practices. The scheme does not extend to 'detention orders', which the SACAT will continue to authorise under the [Guardianship and Administration Act 1993 \(SA\)](#).

The SAO and the Restrictive Practices Unit, which supports the SAO's operations, is located in DHS. The OPA was an early adopter of the new scheme and worked closely with the unit to ensure that all Public Advocate clients transitioned to the scheme; that appropriate authorisations were in place for restrictive practices; and liaised with NDIS service providers who previously sought consent from a guardian regarding implementation.

Although the Public Advocate no longer authorises restrictive practices for NDIS participants, the OPA's role remains significant in terms of consultation on their use and the power to seek reviews of decisions made by NDIS providers and the SAO.

The OPA looks forward to continuing its work with NDIS providers and the SAO to help safeguard people with behaviours of concern and reduce the need for restrictive practices.

Disability Advocate

The South Australian Disability Advocate was a position located within the OPA from January 2019 to December 2022. The purpose of the role was to ensure that South Australians with a disability and their families were getting a good deal from the NDIS during the transition from state-funded to NDIS-funded arrangements.

During this time the Disability Advocate met with hundreds of people with disability, families, advocates, and carers to discuss their experiences with the NDIS, what was working well and areas for improvement. Reports on a range of topics, usually with the Public Advocate as senior author, were presented to ministers and senior state and NDIA officers and are available on the [OPA website](#).

NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission (the NDIS Commission) is the regulator of registered NDIS service providers and commenced in South Australia in July 2018. The OPA actively engages with the NDIS Commission, particularly in relation to behaviour support and restrictive practices, as well as strengthening relationships in the areas of complaints, reportable incidents and compliance.

The NDIS Commission attended a number of stakeholder meetings convened by the Public Advocate including the *OPA Disability Forum* and the *Public Advocate Clients and Domestic Family Violence Working Group*. The Public Advocate recently made a submission to the NDIS Review on the Quality and Safeguarding Framework.

Safeguarding Adults

Adult Safeguarding Unit

The Office for the Ageing (Adult Safeguarding) Amendment Act 2018 (SA) established an Adult Safeguarding Unit (ASU) within the Office for Ageing Well, SA Health (OAW). The ASU is responsible for:

- receiving, assessing and investigating reports related to the suspected abuse of vulnerable adults
- referring matters to other organisations, as appropriate
- coordinating multi-agency, multidisciplinary responses to support vulnerable adults in response to reports of suspected abuse, including appropriate follow-up
- collating data and providing advice to the minister and others.

The unit is guided by a Charter of the Rights and Freedoms of Vulnerable Adults, developed to ensure a human rights-based approach to providing safeguarding support, tailored to the needs and wishes of people experiencing abuse or neglect.

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

- advocacy for the rights and interests of vulnerable adults
- individual participation in decisions that affect them
- prevention and early intervention strategies.

The OAW retains policy responsibility for the Strategy to Safeguard the Rights of Older South Australians and the associated action plan, including elder abuse prevention and raising awareness.

The Public Advocate is also represented on the interagency Abuse Prevention phone line and Adult Safeguarding Unit Implementation Workgroup. This group meets every three months and provides a forum for members to engage about the Abuse Prevention phone line, referral pathways and operationalising safeguarding outcomes.

The Abuse Prevention phone line provides support, referral and information to callers and is the portal to the ASU. Staff receive and respond to reports of abuse for the purposes of developing a safeguarding plan tailored to the needs and wishes of those experiencing abuse.

Alliance for the Prevention of Elder Abuse (APEA)

The Public Advocate, the PT, Legal Services Commission, SAPOL and Aged Rights Advocacy Service form the Alliance for the Prevention of Elder Abuse (APEA). The member agencies combine their expertise and efforts to raise awareness of elder abuse, to promote strategies to empower older citizens and to prevent or minimise the risk of abuse.

The Public Advocate continues its membership of the APEA with the aim of empowering community members. In recent years, the APEA has produced publications including:

- *Safeguard your Finances*
- *Appointing an Enduring Power of Attorney*
- *The Duties and Responsibilities of Your Enduring Power of Attorney*
- *Appointing a Substitute Decision-Maker*
- *Duties and Responsibilities of Substitute Decision-Makers*
- *Witnessing Documents*
- *Recipes for Living Well.*

These valuable resources and other publications can be found on the [APEA website](#).



Unmet need

Disability Services

Unmet need in Disability services

The most pressing issues for people with disabilities continue to be:

- availability of appropriate supported accommodation options
- locating affordable and appropriate housing
- securing tenancy rights and responsibilities
- the capacity of the service environment to support clients with exceptionally high needs and complexity
- improving the pathways from child to adult guardianship
- the lack of crisis responses and escalation pathways
- the lack of case management support
- the need for a provider of last resort
- the shortage of trained and experienced disability support workers.

Appropriate supported accommodation options

The lack of suitable housing continues to be the single and most important barrier for people with impaired decision-making capacity under guardianship. This gap in supported accommodation options for clients with disability leads to heightened welfare and safety concerns. This includes increased risks of violence, abuse, neglect and exploitation when appropriate accommodation is either unavailable or cannot be accessed in a timely way. The support needs of guardianship clients are commonly too complex for usual housing pathways, and Public Advocate clients face lease non-renewal and eviction from public, social and private housing at increasing rates.

The shortage of appropriate supported accommodation options continues to grow and has resulted in an increasing number of Public Advocate clients with disability spending extended periods of time in hospitals, hotels, homelessness shelters or other inappropriate accommodation options. This issue is systemic and places vulnerable South Australians with impaired decision-making capacity at increased risk of repetitive homelessness.

Locating affordable and appropriate housing

The process of locating affordable and appropriate housing for people with impaired decision-making capacity has been referred to in previous annual reports. To be eligible,

NDIS plans must include a goal related to home and living supports and must be supported by assessments and evidence when applications for SIL and SDA are involved.

The application and approval processes are sequential, rather than concurrent, and commonly result in waiting times of several months. Review and appeal processes also result in additional delays, and the NDIA will not approve short-term and, until early 2023, medium-term accommodation options unless a longer-term option has also been identified.

The NDIA has amended its policy so that people leaving hospitals and correctional facilities are no longer required to have long-term accommodation in preparation before medium-term accommodation funding is approved.

Securing tenancy rights and responsibilities

The lack of suitable housing and accommodation options for people with a disability or impaired decision-making capacity has led to a range of housing and tenancy arrangements being offered to clients that may not meet the requirements of the [Residential Tenancies Act 1995](#) (SA). NDIS support providers are offering combined support and tenancy arrangements to clients that place them at significant risk.

Under these combined agreements, when a tenancy arrangement breaks down, the client concurrently loses supports, and their tenancy. Tenancies are also being sub-leased to clients who do not appear on tenancy agreements, and who are not afforded basic tenancy rights including periods of notice for the termination of lease agreements. This pattern results in clients with impaired decision-making capacity 'cycling' through different accommodation places with new service providers.

Clients with exceptionally high needs and complexity

The Public Advocate is guardian for people with some of the most complex needs and circumstances in our community. Increasing numbers of Public Advocate clients require individualised, tailored and customised housing and support solutions that do not exist in the current market-based, choice-orientated structure. Many Public Advocate clients who present with high needs, dual diagnosis, complex psychosocial disabilities and complicated behaviours are not funded for higher levels of SIL and SDA housing and accommodation support. This increases housing eviction rates, placement breakdown, withdrawal of accommodation and independent living supports, social admissions to hospital, risk of homelessness, and entry into the criminal justice system.

Few providers offer accommodation and support services to these clients, and staff engaged by service provider agencies commonly lack the skills or training to support them in the community. The high failure rate of accommodation and support for guardianship clients with exceptional needs, circumstances and challenging behaviours underscores the need for a provider of last resort, who cannot simply cease services and 'walk away'.

Improved pathways from child to adult guardianship

Clients with disabilities transitioning from youth to adult guardianship represent some of the most vulnerable and high-needs clients in the community. For clients who are under the guardianship of the Chief Executive of the Department for Child Protection (DCP), an application is made to the SACAT by DCP staff in the weeks prior to a person's eighteenth birthday to transition to adult guardianship.

The Public Advocate is regularly appointed as the guardian for former DCP clients who have complex support needs involving psychosocial disabilities, dual diagnosis, and who have experienced high levels of neglect, trauma and abuse in their lives. They commonly show significant and entrenched behaviours of concern, are often highly mobile in the community, sexually active, drug and alcohol seeking, and are particularly vulnerable to violence, abuse and exploitation by others.

Former DCP clients commonly have limited skills to transition to independent living arrangements under adult guardianship and require higher levels of support and case management beyond that which is funded by the NDIS. Most are required to live with 1:3 (1 support worker for 3 clients) or 1:4 shared support and in accommodation arrangements that are highly volatile and insecure, and do not meet their complex care needs.

Lack of crisis response and clear escalation pathways

Crisis responses and escalation pathways for vulnerable clients under guardianship are limited and difficult to activate. Under current arrangements, there is no quick response or pathway to safeguard an NDIS participant if their support services or housing break down or fail.

Escalation pathways do not provide same-day responses and after-hours crisis pathways do not currently result in locating alternative accommodation and support outcomes for vulnerable clients. Crisis options remain inadequate and are limited to acute hospital settings and other unsuitable arrangements including hotels.

A more responsive crisis pathway is urgently required to safeguard vulnerable clients in crisis or in need of temporary, urgent and crisis accommodation.

The lack of case management support

The lack of case management in the NDIS has a significant impact on Public Advocate clients and others who have impaired decision-making capacity. The NDIS has avoided the concept of case management due to its concerns that it leads to disempowerment and condescension.

People who struggle with choice and control, or are not engaged with service systems, require case management to assist with navigating the complexity of the NDIS. The loss of case management previously provided by the state government has resulted in there being

no one 'go-to person' for participants. The closest thing to case management in the NDIA is support coordination, which is funded within the plan only upon request and is funding and time limited. The NDIS needs to make comprehensive case management available for all participants who need it.

Need for a provider of last resort

Since the commencement of the NDIS, there has been a significant increase in funding into the disability sector. This has resulted in the rapid expansion of existing service providers and a growth in new providers entering the market.

In the current market, a service provider can choose whom they want to provide services to. Many Public Advocate clients require highly specialised support and have significant funding packages through the NDIS. Some service providers may agree to take on clients with complex needs and later withdraw services when they are unable to provide the specialised support the person requires. For some Public Advocate clients, this failure of support results in cycling through service providers with increasing periods of service interruption, breakdown and homelessness.

When services are withdrawn for clients with complex needs and behaviours, it is difficult to source a substitute provider at short notice who is equipped and willing to assume services. The regularity of service failure and service cycling for guardianship clients highlights the need for a provider of last resort – an accommodation or support service provider that can step in when the market fails to provide the required services. The OPA has worked collaboratively with DHS Disability Services to address this need for some Public Advocate clients who have exhausted all other service and support options.

Shortage of trained and experienced disability support workers

Locating services with suitably trained and experienced staff to work with clients with complex psychosocial disabilities and impaired decision-making capacity is problematic. The rapid growth in the disability sector since the commencement of the NDIS, coupled with the existing challenges in attracting and retaining skilled disability staff, has reached a critical level.

The influx of disability support providers who are sole traders, and unregistered with the NDIS Quality and Safeguards Commission, is making it difficult to secure the right levels of support, oversight and safeguarding for participants with high and complex needs. The availability and knowledge base of the various market providers varies significantly. Additionally, specialist support coordinator services are sometimes inexperienced in sourcing housing or providing those higher levels of evidence required to support individualised, tailored and specialised accommodation and supports. This results in a preventable gap in meeting the complex care and support needs of this vulnerable population and client group.

Addressing unmet need in the disability sector

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

1. Assistance to increase the supply of housing, accommodation and SIL options for people with disabilities, including psychosocial disabilities, with a particular focus on those under guardianship with complex needs.
2. Support for community housing providers to expand the supply of community housing for clients with SDA and for those not eligible but have SIL funding.
3. The requirement for tenancy agreements to comply with the standards and obligations of the *Residential Tenancies Act 1995 (SA)*.
4. State Government advocacy to the NDIA for appropriate SIL and SDA funding and levels of support for vulnerable adults with impaired decision-making capacity.
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 capacity.
7. Establishment of responsive crisis pathways and gateway services to safeguard vulnerable clients who are in urgent need of crisis, temporary and immediate accommodation.
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 capacity, and who present with complex needs including dual diagnosis, psychosocial disabilities and challenging behaviours.
9. A 'matching' mechanism for demand and supply of supported disability accommodation, such as a supported accommodation register, in South Australia.
10. Education of specialist and support coordinators regarding housing options via market stewardship.

Mental Health Services

Unmet need in mental health

Key issues for Public Advocate clients specific to mental health are:

- the classification of mental health diagnoses
- the transition of people with psychosocial disability to the NDIS
- the availability of appropriate supported housing options for people with psychosocial disabilities with mental health needs
- accommodation and support for older people with mental health needs.

Definitions of mental health

Clients with complex psychosocial disabilities, and mental health needs, often do not meet diagnostic categories to receive mental health services when their primary presentations are classified as:

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

Clients with psychosocial disabilities commonly present with underlying mental health concerns, which remain unreported, undiagnosed, or hidden amongst other challenging behaviours.

Those who fail to meet mental health diagnostic criteria, or intake measures, commonly experience increased disadvantage, receive less commonwealth and state-funded supports, are routinely discharged from tertiary healthcare providers without further assessments, are not candidates for public and community housing and experience increased levels and durations of service failure in the community.

Psychosocial disability transition to NDIS

South Australians with psychosocial disabilities face increased obstacles when navigating the NDIS system and are entering the NDIS at a slower rate than in other jurisdictions. These include challenges in initiating and maintaining engagement with the NDIS access process, obtaining the necessary clinical and other assessments to satisfy evidence requirements, and navigating the intersection between the 'siloes' health and disability systems.

On 30 June 2023, there were 3,776 South Australians with psychosocial disability participating in the NDIS. This is an increase of 471 (14.25%) people from the previous year

when there were 3,305 participants. The 3,776 participants with psychosocial disability represent 7% of all South Australians accessing the NDIS. The Productivity Commission estimated that 4,800 people in South Australia with psychosocial disability would be eligible for the NDIS.

Most people under the Public Advocate's guardianship with a primary diagnosis of mental illness or psychosocial disability have now transitioned to the NDIS as the Public Advocate has considered this a priority for clients under guardianship.

Housing and accommodation

People with impaired decision-making capacity face multiple challenges in finding, securing, and maintaining appropriate housing. This is especially true for those people with mental health conditions, and they often stay in inappropriate inpatient settings, forensic health services and sometimes in custodial settings for long periods.

Supported Residential Facilities (SRFs) continue to be one of the only community-based supported housing options for people with mental health conditions. The SRF sector is an important housing option for Public Advocate clients with various mental health and psychosocial conditions, however, this type of accommodation is usually congregate living and may include shared rooms. Such accommodation is often unsuitable for people who have complex behavioural and mental health conditions, and who require high levels of support to live independently in the community. There is a need for a model of housing that meets the fluctuating nature of a psychosocial disability.

Older persons and mental health needs

A key problem for older people in South Australia with severe and enduring mental illness is the insufficient availability of supported housing and support models that focus on younger people. The Public Advocate has several clients with severe and enduring mental illness whose needs cannot be fully met in mainstream aged care, or in dementia-specific neuro-behavioural units. Some suitable facilities are currently available, but further supply is required to meet the increasing demand for this service.

Forensic Mental Health Services

Forensic mental health services within the Northern Adelaide Local Health Network (NALHN) include James Nash House (acute and inpatient service), Kenneth O'Brien Rehabilitation Centre and Ashton House Rehabilitation Service. These services are all located in Oakden.

Tarnanthi Forensic Inpatient Rehabilitation Service is a 10-bed forensic disability service at Glenside campus. This new site is a significant improvement on its previous location in a ward at James Nash House. Previous annual reports identified the need for a dedicated forensic disability service and whilst this is achieved at the Glenside Campus, the service has

limited space for staff and client activities and meetings. A proposal for a dedicated facility to be built at James Nash House for forensic disability service is yet to be realised.

Ashton House has eight two-bedroom shared units in a pleasant location. This environment along with highly skilled staff enables clients to further rehabilitate and transition to community living.

The Kenneth O'Brien Rehabilitation Centre is less than 10 years old and facilitates transition from acute and inpatient settings. It is well designed with open spaces and individual rooms with ensuite bathrooms and appropriate outdoor areas with walking and cycling paths.

In contrast, James Nash House provides acute and inpatient services in a building that is old and in urgent need of refurbishment or replacement. The Aldgate ward resembles a prison setting and does not provide a therapeutic environment and noise is a significant issue for clients who are acutely unwell. There are few areas for comfortable retreat, sensory support or treatment areas/rooms. Clients in the Birdwood and Clare wards share rooms and bathrooms, and the dining room is small for the number of clients, with queuing at mealtimes, and presents a safety issue due to the number of people in a small space. The detention suite, which is used for forensic patients who are very unwell with high risk behaviours, has a small bedroom, living and outdoor area. Whilst the suite provides a dedicated area for a patient, it is a confined, prison-like space that is old, bland and not conducive to recovery and wellbeing.

In summary, the original James Nash House building is in urgent need of replacement or refurbishment.

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. Improved access to mental health services for those with psychosocial disabilities under adult guardianship.
2. Enhanced information sharing between state and commonwealth government agencies to assist individuals to transition to the NDIS.
3. Greater use of supported decision-making for people with psychosocial disability to assist them to access services, which accord with their will and preferences.
4. Continuation of the inter-agency work on service connections and housing, bringing together stakeholders from SA Health, the SAHA, the OPA and the NDIA.
5. Development of a broad range of accommodation options that includes specialist accommodation for younger and older people with severe mental illness.
6. Replacement or refurbishment of James Nash House is a priority to improve the well-being of forensic acute and inpatient clients.

Aged care

Unmet need in aged care

The key issues for OPA with respect to aged-care concern:

- the use and authorisation of restrictive practices
- the availability of home care packages
- quality and safety standards
- workforce planning
- catering for diversity and individuality
- appropriate accommodation options for older Australians with mental illness.

Restrictive practices

The *Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Act 2021* (Cth) was passed by Parliament on 28 June 2021 and commenced on 1 July 2021. It came as part of reforms to aged care in response to the Aged Care Royal Commission's final report, with a particular emphasis on restrictive practices. The new laws place stronger obligations on residential aged care providers to ensure that restrictive practices are only used as a last resort, are recommended by a health practitioner or behaviour support specialist, and that informed consent is obtained.

Where a person cannot consent due to their impaired decision-making capacity, guardians and substitute decision-makers must provide consent for use of the restrictive practice to be lawful. This is different to the authorisation system for NDIS participants, which has moved to the oversight of the Senior Authorising Officer and is discussed earlier in this report.

Strengthened regulation of restrictive practices in aged care is welcomed by the Public Advocate. The focus on 'informed consent' has resulted in the Public Advocate having an increased role in making decisions about restrictive practices for guardianship clients in residential aged care.

The Public Advocate has responded to this by extending the restrictive practices project to ensure consistent and efficient responses to the demand for consent to restrictive practices for Public Advocate clients in residential aged care.

The existence of two separate authorisation schemes for the use of restrictive practices has the potential to be confusing for guardians, family and providers alike. Ideally, there should be consistency in this area, irrespective of whether a person receives aged care or NDIS services.

Emulating the NDIS authorisation scheme for the aged care sector would likely provide greater oversight, monitoring, and reporting of restrictive practices in this sector. It would

also assist aged care service providers to build their capacity to appropriately support older Australians exhibiting challenging behaviours.

Receiving necessary care at home

The findings of the Aged Care Royal Commission demonstrated that there continues to be considerable unmet demand for home care packages, and unacceptable waiting periods to access care at home.

The Public Advocate has reported for consecutive years that delays in receipt of home care packages can lead to people prematurely entering residential aged care. This is often against their wishes but is unavoidable because it is not safe to remain or return home without a suitable home care package. In these situations, the Public Advocate often must consent to a residential aged care placement as the next most appropriate option to ensure that the person's support and care needs are met.

The Public Advocate reiterates its support for Recommendation 39 of the Aged Care Royal Commission, which calls for immediately increasing and allocating home care packages.

Aged care quality and safety

Throughout the year, the Public Advocate received numerous 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, which included Notices to Agree and sanctions in relation to particular providers and care facilities that had failed to meet required aged care standards. The Public Advocate was most commonly informed of non-compliance notices in relation 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.

Strong oversight, adherence and sanctions are required for those facilities and providers who continue to fall short of the expected care standards of older people seeking or receiving aged care in the community.

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

Aged care workforce planning

The scarcity of appropriately trained and accredited health professionals, allied health professionals and personal care workers in aged care facilities continues to represent a challenge and risk to the aged care sector.

During the peak of the COVID-19 pandemic and subsequent state lockdowns, the shortfall of these important workers hit crisis point.

The Public Advocate has noted a specific need for aged care workforce planning, and the development of workforce strategies, to better attract and retain an appropriate aged care workforce for the growing older population, including those under adult guardianship.

A review of the qualifications, competencies and skills of aged care workers and personal care providers is urgently needed, in conjunction with a review of award rates in aged care for the various occupational groups.

Diversity, difference, complexity and individuality

The Public Advocate shares the views and supports the findings and recommendations of the Royal Commission into Aged Care Quality and Safety in relation to diversity, difference, complexity and individuality.

Older Public Advocate clients come from diverse social and cultural backgrounds and aged care providers need to better cater for these diverse backgrounds and life experiences. This includes:

- those with special needs involving mental illness, dementia and disability
- those from diverse ethnic and cultural backgrounds
- Australians from Aboriginal and Torres Strait Islander backgrounds
- those living in regional and remote areas.

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. Consider expanding the new South Australian scheme for the authorisation of restrictive practices in NDIS settings to restrictive practices in aged care
3. Increasing the availability of behaviour support specialists who have training and expertise in dementia management and the needs of older people
4. Adoption at the commonwealth level of Recommendation 39 of the Aged Care Royal Commission, to provide prompt access to home care packages for people who need them
5. Recognition, use and funding for supported decision-making to assist older people to express their wishes and preferences and to plan for their future care

Reform to Commonwealth aged care

The aged care system is undergoing significant reforms following the Aged Care Royal Commission's final report, which will progress over several years. Reforms are planned in areas including:

- regulation of aged care services and providers
- the aged care funding model
- supporting people with dementia and their carers
- choice and control for consumers
- regulation of the aged care workforce
- provision of home care services
- Regulation of restrictive practices.

Housing

Unmet need in housing

Housing issues continue to be one of the highest risk factors for Public Advocate clients across all cohorts. Finding suitable, safe and affordable housing remains a significant challenge for clients.

These challenges include:

- a scarcity of public and community housing
- non-renewal of lease or eviction of Public Advocate clients from their social housing
- rental affordability in the private rental market – Public Advocate clients are generally reliant on the Disability Support Pension which limits them to community housing and South Australian Housing Authority (SAHA) housing
- limited supply of SDA housing – Clients who receive SDA funding in their NDIS plan must source an SDA property that meets both their needs and available funding.
- slow update in the community housing sector to develop SDA properties; when developed, there is a preference for high physical support housing. This results in Public Advocate clients with complex behaviours struggling to find a robust SDA property, which matches their funding and preferred location
- closed SIL arrangement (SIL provider is also the landlord) leaving clients vulnerable. There are few protections under the [Residential Tenancies Act 1995](#) (SA) in these situations. When a service provider is no longer able to support a client, they lose both their support and their housing
- NDIA housing processes are not responsive or timely enough when housing arrangements break down
- the NDIA historically has not been willing to fund short or medium-term accommodation if there is no longer term accommodation option arranged; this has just been relaxed for medium term accommodation for those exiting hospital or prison
- the lack of an accommodation provider of last resort; clients with behaviours of concern increasingly face homelessness and/or extended stays in hospitals or hotels.

The Public Advocate continues to advocate to address the housing needs of those people under guardianship.



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 (SAHMRI), DHW and the OPA partnered to conduct a project called 'Living My Life'. This project has been funded \$1.28 million by the Commonwealth Community Grants Hub, on behalf of the NDIA (Mainstream Capacity Building Program).

A Governance Group, a Reference Group, a Health Interface Group, OPA Internal Working Group and OPA/SAHMRI dedicated project managers supported this project to its original conclusion date at the end of 2022.

This project had three components:

1. To build the capacity of Public Advocate clients to help them express their wishes, including future healthcare wishes, using supported decision-making practices.
2. To provide access for participants and their support networks to the SAHMRI 'Be Well' Wellbeing and Resilience Training. This aims to assist participants and their supporters to better sustain their efforts towards a life of the participants' choosing by enhancing their mental health.
3. To enhance the supported decision-making practice framework within public health services, including use of the My Health Information form (developed by DHW). Hospitals place great importance on patients as partners in their own care, and this form assists patients to participate to the extent they choose.

Highlights of the OPA managed components of this project include:

- The development and pilot of a whole-of-life planning document titled *My Life My Wishes*. Use of this document aims to increase opportunity for people without capacity to complete a non-statutory set of instructions (that is similar to an ACD) to express and record their wishes about all areas of their life.
- The delivery of supported decision-making training to guardianship staff at the OPA.
- Launch of a video series hosted on the OPA website aimed at increasing awareness of supported decision-making in the health sector and wider community.

The project has since been granted an extension to June 2024. The OPA component of this extension will enable further piloting of the *My Life My Wishes* document and will promote guardianship practice improvement.

Eldercaring Coordination Pilot Program

Since early in 2021, the OPA has worked with Relationships Australia (RASA), the University of South Australia and the Association for Conflict Resolution in the United States to bring Eldercaring Coordination to South Australia.

Eldercaring Coordination is a dispute resolution process specifically created for families experiencing conflict about the care, autonomy, and safety of older adults. The process helps the family to focus on how they can meet the needs of their elders, rather than focusing on other relational, financial, and legal issues.

The process suits families that are experiencing high conflict, where conventional mediation may not be appropriate, and where a long-term, highly practical model of support is required.

Eldercaring Coordinators can help to:

- manage high conflict family dynamics
- support the ageing person's self-determination and 'voice'
- promote safety by monitoring at-risk situations
- develop a support system for the aging person and family.

An OPA DRS staff member has undertaken Eldercaring Coordinator training to provide dispute resolution assistance, supervision, and continued oversight, as well as specific support regarding ACDs and related South Australian legislation.

The Eldercaring Coordination Pilot Program began in December 2022, with the aim of investigating how this unique dispute resolution model might align with existing dispute resolution and elder mediation frameworks.

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

In December 2022, the OPA was awarded a grant through the Department of Social Services to pilot a project titled Culturally Safe Supported Decision-Making. The project aligns with Australia's Disability Strategy Safety Targeted Action Plan objectives 3.2 and 3.3.

The project commenced on 1 April 2023 and will run until 30 June 2024.

The Pilot project aims to:

- assist OPA staff to ascertain the life preferences, future health care and accommodation wishes, and access to mainstream services for Aboriginal clients using culturally appropriate supported decision-making tools and practices
- enhance overall practice within OPA in relation to working with Aboriginal clients
- assist other agencies and systems to understand and adopt supported decision-making practice as a means of supporting human rights, particularly in relation to Aboriginal people.

The project deliverables are:

- Culturally appropriate supported decision-making tools
- A training package to support culturally safe practices
- Documentation of the will and preferences of the Public Advocate's Aboriginal clients through a pilot use of developed tools and practice
- Evaluation of tools and practice
- Community education and information for other systems and agencies, to increase their understanding of supported decision-making and its benefits for all those who need support in making decisions.

Student program

Over the past several years, the OPA has partnered with Adelaide University to provide fifth year Bachelor of Laws students with the opportunity to undertake an internship with OPA.

Students undertake a 22-day placement within the Strategy and Advocacy Team. During this time, they are given a range of opportunities within the office, usually including a visit with SA Parliamentary Counsel, and observing SACAT hearings.

Students are challenged with a legal question, which is relevant to the work of the OPA, and they present their findings to the Public Advocate and OPA leadership at the conclusion of their placement. During 2022-23, the OPA hosted three students. Student papers are published (with the student's permission) on the [OPA website](#).

Business improvement projects

Induction program

The OPA has updated its induction program for new staff to ensure that they feel welcome, supported and equipped with the knowledge and information they need to undertake their role in the OPA.

The induction program is delivered over the first six to twelve weeks of employment and includes information sessions and training modules relating to the various areas of work undertaken by the OPA. New staff members are also partnered with an experienced staff member with whom they work closely and who can support their learning.

The induction program undergoes continuous improvement based on feedback and input from the new staff.

Workforce strategy

During the year the OPA embedded the Guardianship Liaison Officer (GLO) role following a successful trial. The OPA also introduced the AHP 1 role as an entry point to the workforce to support succession planning. These roles support the guardianship function.

Professional development

The OPA provides a range of professional development opportunities for staff to support them in working with Public Advocate clients. In addition to access to training modules provided through the Attorney-General's Department, the OPA regularly hosts guest speakers. In the last year, guest speakers have covered topics such as:

- Residential tenancy laws and agreements
- Palliative care
- Multi Agency Protection Service
- Professional note taking from a legal perspective
- NDIS Quality and Safeguards Commission on complaints and reportable incidents
- Aged Care Quality and Safety Commission on complaints
- NDIS on the Justice system and the Justice Liaison Officer role
- The eSafety Commission on supporting women with intellectual or cognitive disability – understanding technology-facilitated abuse.

Organisational reporting: Development of a data dashboard

The Public Advocate recognises the value of business intelligence and quality and timely data analyses to support and inform service delivery and evidence-based decision-making, and plan for future business needs.

In July 2021, the OPA launched a detailed data dashboard for key performance indicators and organisational activity, which was developed in collaboration with Performance and Business Services, in the Attorney-General's Department. The dashboard provides access to the latest individual and aggregated client data.

In 2022-23, OPA developed new reporting capabilities and tools to provide customised data solutions that are updated nightly and highly accessible. The new tools offer individual client and cohort-based reporting on all client data.

Additional enhancements during 2022-23 include:

- a service model graphic that provides a clear visual of the OPA's workflow and up-to-date client allocations within each OPA team or service area
- a simplified and accessible risk register to monitor clients with complex needs and circumstances
- enhanced COVID-19 reporting tools
- workload analysis tools to monitor the flow and urgency of incoming phone and email requests
- flexible supervision tools to provide data snapshots of client cohorts and recent activity breakdowns
- monthly analyses of after-hours calls and outcomes
- periodic analyses of aggregated NDIS plan data for Public Advocate guardianship clients who are NDIS participants
- a new model for induction and refresher training for staff, to ensure appropriate and effective use of the client information recording system.

These new capabilities provide additional safeguards for guardianship clients and strengthen trend analysis, forecasting and risk management strategies within the OPA. Further innovation is anticipated in 2023-24.



Engagement

Meetings

In 2022-23, 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, 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
- mental health services
- OPA/SAHMRI 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.

The AGAC conference 'Renewal: Putting Rights into Practice' was held in Melbourne from 20 – 21st October 2022. OPA staff were offered the opportunity attended in person and online. Conference topics included:

- financial elder abuse
- people with Acquired Brain Injury and the criminal justice system
- restrictive practices in aged care
- supported decision-making
- Is the NDIS living up to expectations and what needs to change?
- NDIS and hard to reach groups
- Indigenous perspectives
- Article 12 Roadmap to Transformation
- human rights and safeguarding
- aged care in the wake of the Royal Commission: where are we at?
- Enduring Powers of Attorney: Harmonisation and National Register.

In addition to the conference, AGAC met in February 2023. This year, AGAC members made a joint submission to the NDIS Review.

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](#).

Written submissions

The OPA also makes submissions on issues that are relevant to the clients of the Public Advocate, and proposed legislative and systemic changes that affect the function of the Public Advocate. During the 2022-23 financial year, the Public Advocate made the following submissions:

- Review of the NDIS
- Review of the NDIS Quality and Safeguarding Framework
- Productivity Commission Review of the National Agreement Closing the GAP
- Inquiry into the operation of the National Redress Scheme
- Joint Standing Committee on the NDIS – New NDIS General Issues Inquiry
- Chief Psychiatrist Standards Sexual Safety in Mental Health Services
- Youth Mental Health Service Model of Care for South Australia
- Aged Care Quality Standards
- Social Development Committee Inquiry: NDIS impact on South Australian participants with complex needs who are, or are at risk of, living in inappropriate accommodation for long periods

- Review of the *Residential Tenancies Act 1995* (SA)
- Review of the *Mental Health Act 2009* (SA)
- Review of the *Ageing and Adult Safeguarding Act 1995* (SA)
- National Principles to Address Coercive Control
- Multicultural Charter for South Australia
- National Disability Advocacy Framework
- Review of the *Children and Young People (Safety) Act 2017* (SA) (via the Commissioner for Children and Young People)
- Community Mental Health Service Model of Care (SA)



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)

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

AAS Act	<i><u>Ageing and Adult Safeguarding Act 1995</u></i> (SA)
ACD	Advance care directive
AGAC	Australian Guardianship and Administration Council
AGD	Attorney-General's Department
APEA	Alliance for Prevention of Elder Abuse
ASU	Adult Safeguarding Unit
BD	Bipolar Disorder
CLO	Community Living Options
DCP	Department for Child Protection
DCS	Department for Correctional Services
DI Act	<i><u>Disability Inclusion Act 2018</u></i> (SA)
DSS	Department of Social Services (Cth)
DHS	Department of Human Services (SA)
DHW	Department for Health and Wellbeing (SA)
DRS	Dispute Resolution Service
ENU	Exceptional Needs Unit
LSC	Legal Services Commission
MAPS	Multi-Agency Protection Service
MHA	<i><u>Mental Health Act 2009</u></i> (SA)
NALHN	Northern Adelaide Local Health Network
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NGO	Non-Government Organisation
OAW	Office for Ageing Well
OPA	Office of the Public Advocate
PT	Public Trustee

RASA	Relationships Australia South Australia
RTA	<u><i>Residential Tenancies Act 1995 (SA)</i></u>
SACAT	South Australian Civil and Administrative Tribunal
SAHA	South Australian Housing Authority
SAHMRI	South Australian Health and Medical Research Institute
SAO	Senior Authorising Officer
SAPOL	South Australian Police
SDA	Specialist disability accommodation
SDM	Substitute decision-maker
SIL	Supported independent living
SRF	Supported residential facility
TBI	Traumatic brain injury
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities

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:

PC013 Statutory Reporting Requirement	
Employment opportunity programs	Refer to the Attorney-General’s Department (AGD) Annual Report 2022-23
Agency performance management and development systems	Refer to the AGD Annual Report 2022-23
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2022-23
Work health and safety and return to work performance	Refer to the AGD Annual Report 2022-23
Fraud detected in the OPA	Number of instances: 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2022-23
Whistle-blowers’ disclosure	Refer to the AGD Annual Report 2022-23
Executive employment in the agency	Refer to the AGD Annual Report 2022-23
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2021-22
Complaint outcomes (table)	Refer to the AGD Annual Report 2021-22



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