



# Office of the Public Advocate

## 2016-17 Annual Report

Office of the Public Advocate

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To:

The Hon. John Rau MP  
Attorney-General

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

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

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

Anne Gale

Public Advocate



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Signature

28 September 2017

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Date

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## **Section A: Reporting required under the *Public Sector Act 2009*, the *Public Sector Regulations 2010* and the *Public Finance and Audit Act 1987***

### **Agency purpose or role**

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

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

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

### **Objectives**

- To review programs for mentally incapacitated persons and to make recommendations to the appropriate minister about unmet need or inappropriately met need.
- To promote the rights and interests of persons with a mental incapacity through systems and individual advocacy.
- To provide information and advice to the community related to mental health, guardianship and administration, and advance care directives legislation and related issues.
- To act as guardian of last resort, and undertake investigations as required by the South Australian Civil and Administrative Tribunal.
- To provide effective dispute resolution in relation to disagreements around advance care directives and consent to treatment decisions.

### **Key strategies and their relationship to SA Government objectives**

| <b>Key strategy</b>   | <b>SA Government objective</b>  |
|---|---|
| Early intervention: Full guardianship rollout late 2016/early 2017  | Safe communities, healthy neighbourhoods (7 Strategic Priorities)<br>Psychological Wellbeing (SASP Target 86)               |
| Develop an education program for health services about Advance Care Directives and the Dispute Resolution Service | A globally recognised leader in health research, ageing and related services and products (Priority 3, Economic Priorities) |

| <b>Key strategy</b>  | <b>SA Government objective</b>  |
|--|---|
| Complete the OPA review, providing clear roles and responsibilities, and commence implementation of outcomes | Safe communities, healthy neighbourhoods (7 Strategic Priorities)   |
| Undertake process maps for all teams – from the OPA review in May 2016                                       | Premier’s SPEED initiative – Rip it Up  |
| Commence the Supported Decision Making Project to identify good practice (Law Foundation Grant)              | Psychological Wellbeing (SASP Target 86)  |
| Develop and implement a financial plan to achieve savings and repayment goals                                | A globally recognised leader in health research, ageing and related services and products (Priority 3, Economic Priorities) |
| Implement new Felix database reporting   | Safe communities healthy neighbourhoods (7 Strategic Priorities)  |

## Agency programs and initiatives and their effectiveness and efficiency

| Program name                       | Indicators of performance/effectiveness/efficiency  | Comments  |
|------------------------------------|---|---|
| Advocacy and guardianship services | <ul style="list-style-type: none"> <li>• 1219 people received guardianship services during 2016/2017</li> <li>• 304 new guardianship clients</li> <li>• 34 investigations undertaken for SACAT</li> <li>• 378 initial hearings attended</li> <li>• 278 guardianship matters closed</li> <li>• 942 people receiving guardianship services as at June 30 2017</li> <li>• 732 after hours calls responded to</li> <li>• 12 non-guardianship clients received advocacy assistance</li> </ul> <p>Data for the past 5 years is available at:<br/> <a href="https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c">https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c</a></p> | <ul style="list-style-type: none"> <li>• Vulnerable members of the community have their voices heard, human rights promoted and protected and are treated fairly.</li> <li>• Vulnerable members of the community receive access to proper care and are protected from harm and exploitation.</li> <li>• Guardianship and advocacy assists vulnerable members of the community to overcome barriers presented by their disabilities and to access accommodation, treatment and other services.</li> <li>• Guardianship helps prevent personal crises occurring (e.g health or accommodation crises) through early intervention and planning. This reduces the reliance/impact on crisis response service systems such as homeless services and hospitals.</li> </ul> |
| Dispute resolution services        | <ul style="list-style-type: none"> <li>• 98 referrals for mediation received</li> <li>• 19 disputes referred to SACAT</li> <li>• 59 disputes resolved</li> <li>• 19 matters referred to SACAT</li> <li>• 34 matters closed</li> </ul> <p>Data for the past 5 years is available at:<br/> <a href="https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c">https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c</a></p>  | <ul style="list-style-type: none"> <li>• Preservation of personal rights and wishes of community members with impaired decision making capacity.</li> <li>• Increase capacity of family and informal support systems to make substitute decisions for community members with cognitive impairment.</li> <li>• Preserve ongoing family relationships where possible.</li> <li>• Decrease reliance of resource intensive, formal tribunal system for individuals and their families.</li> <li>• Decrease the number of guardianship appointments made to the Office of the Public Advocate.</li> </ul>  |

| Program name                       | Indicators of performance/effectiveness/efficiency  | Comments  |
|------------------------------------|---|---|
| Information and education services | <ul style="list-style-type: none"> <li>• 32 education services delivered</li> <li>• 799 people educated</li> <li>• 3088 callers to information service</li> <li>• 29710 visitors to the OPA website</li> </ul> <p>Data for the past 5 years is available at:<br/> <a href="https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c">https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c</a></p> | <ul style="list-style-type: none"> <li>• Health and community service providers such as hospitals, other health professionals and disability services have a clear understanding of legal mechanisms and duties to support vulnerable community members, as well as the rights of those community members.</li> <li>• Individuals dealing with guardianship and administration matters are informed about actions they can take to support vulnerable community members, and about the rights of those they are supporting.</li> <li>• Members of the community are informed about and empowered with regards to advance planning, which may reduce reliance on SACAT guardianship and administration orders.</li> <li>• Medical consent matters are dealt with effectively without the need to progress to SACAT proceedings.</li> </ul> |

## Legislation administered by the agency

*The Public Advocate has functions under: Guardianship and Administration Act 1993, Advance Care Directive Act 2013, Mental Health Act 2009, Consent to medical Treatment and Palliative Care Act 1995, Wills Act 1936, Powers of Attorney and Agency Act 1984.*

## Organisation of the agency

Guardianship and Investigation Services

Dispute Resolution Services

Customer Service

**Other agencies related to this agency (within the Minister's area/s of responsibility)**

Public Trustee, South Australian Civil and Administrative Tribunal, Crown Solicitor's Office, Attorney General's Department

**Employment opportunity programs**

*Please refer to Attorney General's Department Annual Report*

**Agency performance management and development systems**

*Please refer to Attorney General's Department Annual Report*

**Occupational health, safety and rehabilitation programs of the agency and their effectiveness**

*Please refer to Attorney General's Department Annual Report*

**Fraud detected in the agency**

*Please refer to Attorney General's Department Annual Report*

**Strategies implemented to control and prevent fraud**

*Please refer to Attorney General's Department Annual Report*

**Whistle-blowers' disclosure**

*Please refer to Attorney General's Department Annual Report*

**Executive employment in the agency**

*Please refer to Attorney General's Department Annual Report*

For further information, the [Office for the Public Sector](#) has a [data dashboard](#) for further information on the breakdown of executive gender, salary and tenure by agency.



## **Consultants**

*Please refer to Attorney General's Department Annual Report*

See also <https://www.tenders.sa.gov.au/tenders/index.do> for a list of all external consultancies, including nature of work and value. See also the Consolidated Financial Report of the Department of Treasury and Finance <http://treasury.sa.gov.au/> for total value of consultancy contracts across the SA Public Sector.

## **Financial performance of the agency**

The following is a brief summary of the overall financial position of the agency. The information is unaudited. Full audited financial statements for 2016-17 are attached to this report.

*Please refer to Attorney General's Department Annual Report*

## **Other financial information**

*Please refer to Attorney General's Department Annual Report*

## **Other information requested by the Minister(s) or other significant issues affecting the agency or reporting pertaining to independent functions**

Please refer below for reporting pertaining to independent functions.

## Section B: Reporting required under any other act or regulation

|   |
|---|
| <p><b>Name and date of act or regulation</b></p> <p><b>Guardianship and Administration Act 1993</b></p>   |
| <p>Section/regulation number and reporting requirement specified (extract straight from act or regulation – can be pasted).</p>   |
| <p>22 – Public Advocate may raise matters with the Minister and the Attorney-General</p> <p>(1) The Public Advocate may, at any time, raise matters with the Minister and Attorney-General any concerns he or she may have over any matters arising out of or relating to the performance of his or her functions under this Act or any other Act.</p> <p>(3) The annual report furnished by the Public Advocate under this Act must include a summary of any matters raised by the Public Advocate under subsection (1).</p> <p>Ministers met with:</p> <ul style="list-style-type: none"> <li>• Hon John Rau, Attorney-General</li> <li>• Hon Leesa Vlahos, Minister for Disabilities, Minister for Mental Health and Substance Abuse</li> <li>• Hon Zoe Bettison, Minister for Social Housing, Minister for Ageing</li> </ul> <p>Other Members of Parliament met with:</p> <ul style="list-style-type: none"> <li>• Hon Kelly Vincent, MLC, Dignity Party</li> <li>• Vickie Chapman MP, Shadow Attorney-General</li> <li>• Hon Stephen Wade, MLC, Shadow Minister for Health and Ageing</li> </ul> <p>Matters raised included:</p> <ul style="list-style-type: none"> <li>• Advance Care Directives and community education</li> <li>• Elder abuse</li> <li>• My Aged Care</li> <li>• Services for older vulnerable people and national reforms</li> <li>• Oakden Older Persons Mental Health Service</li> <li>• Supported Residential Facilities, Rooming Houses and homelessness</li> <li>• Supported decision making and goals of care</li> <li>• Inpatient Rehabilitation Services and discharge with appropriate accommodation and support</li> <li>• Disability Services Act 1993</li> <li>• Forensic patient services for both people with disabilities and people with mental health needs</li> <li>• South Australian Disability Justice Plan</li> <li>• Mental Health Commission and Mental Health Plan</li> <li>• The National Disability Insurance Scheme (NDIS)</li> <li>• Legislation - Public Sector (Data Sharing) Bill 2016 and Criminal Law Consolidation (Mental</li> </ul> |

Impairment) Amendment Bill 2016

- Client advocacy

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(1) The Public Advocate must, not later than 30 September in each year, furnish the Minister with a report on the performance by the Public Advocate of his or her functions during the year ending on the previous 30 June.

Functions of the Public Advocate (S21 (1) of the Guardianship and Administration Act)

| Function   | Report on performance of functions in 2016/17  |
|--|--|
| <p>(a) To keep under review, within both the public and private sector, all programmes designed to meet the needs of mentally incapacitated persons; and</p> <p>(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 improving existing programmes; and</p> <p>(c) to speak for and promote the rights and interests of any class of mentally incapacitated persons or of mentally incapacitated persons generally;</p> | <p><b>Disability services</b></p> <p><b><i>National Disability Insurance Scheme</i></b></p> <p>The Public Advocate has been closely monitoring the implementation of the NDIS and undertaken a range of initiatives in preparation for the rollout including:</p> <ul style="list-style-type: none"> <li>• a mapping exercise to plan for, and support, the transition to NDIS for guardianship clients</li> <li>• collaborating with the Department for Communities and Social Inclusion (DCSI) to undertake participant planning for mutual clients to ensure timely access to the scheme and the development of appropriate NDIS plans</li> <li>• participation in inter-jurisdictional and stakeholder forums to track emerging issues, gather relevant information from interstate counterparts who are further progressed with the rollout and resolve transitioning issues</li> <li>• producing an information sheet titled <i>OPA, Guardianship Orders and the NDIS</i> to assist people to understand when guardianship orders might be needed for people entering the NDIS, as well as OPA’s role in the NDIS process if appointed as someone’s guardian</li> <li>• developing office procedures to support guardianship decision making and advocacy to ensure best possible outcomes for clients first NDIS plans.</li> </ul> <p><b><i>Unmet need in disability services</i></b></p> <p>The OPA has established a regular forum with key stakeholders in the disability sector to identify areas of unmet need and ensure collaborative responses. Key areas of unmet need identified and addressed include:</p> <ul style="list-style-type: none"> <li>• appropriate accommodation for people with a mental incapacity</li> </ul> |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• the need for forensic services that separate disability and mental health, and</li> <li>• waiting lists for allied health services.</li> </ul> <p>These matters have been raised with the relevant leaders and ministers by the Public Advocate.</p> <p><b><i>Restrictive practices in disability settings</i></b></p> <p>The OPA worked closely with DCSI to develop their <i>Code of Practice for Eliminating the use of Restrictive Practices in South Australia</i>. The policies developed are consistent with the intent of the United Nations <i>Convention of the Rights of Persons with Disabilities</i> which reflects the need to protect the rights, freedoms and inherent dignity of people with disabilities.</p> <p><b>Aged Care</b></p> <p><b><i>My Aged Care</i></b></p> <p>OPA has worked with Australian Guardianship and Administration Council (AGAC) members and the Commonwealth Health Department to identify ways to access My Aged Care and associated aged care services on behalf of people with impaired decision making capacity.</p> <p><b><i>Elder abuse</i></b></p> <p>OPA has made submissions to <i>Australian Law Reform Commission (ALRC) Inquiry into Elder Abuse</i>; and to the <i>South Australian Joint Parliamentary Inquiry on Elder Abuse</i>. The Public Advocate appeared before the Committee in May 2017.</p> <p><b>Mental Health</b></p> <p><b><i>State Plan for Mental Health</i></b></p> <p>The Public Advocate is a member of the Mental Health Commission Steering Group for the development of the new State Plan for Mental Health and has made a submission to this group regarding the needs of people with a mental incapacity.</p> <p><b><i>Unmet need in mental health services</i></b></p> <p>The Public Advocate has raised matters of unmet need in mental health services at an executive and ministerial level within government. The key matter raised is a lack of suitable accommodation for people with mental illness.</p> <p><b><i>Older Person’s Mental Health Service</i></b></p> <p>In April 2017, the Chief Psychiatrist’s report on the Oakden Older Persons’ Mental Health Service was</p> |
|--|---|

|   |   |
|---|---|
|   | <p>released, highlighting the importance of preventive and responsive services to address the abuse of adults, especially older people. The Office of the Public Advocate contributed to the Oaken Review that informed the Chief Psychiatrist’s report.</p> <p><b>Goals of care project</b><br/>The OPA has worked with advocates to trial a form for people with a mental incapacity to document their future wishes regarding health care, including end of life wishes. People with a mental incapacity are not able to complete an Advance Care Directive and recording of wishes around future care including end of life care is not always documented.</p>  |
| <p>(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;</p> | <p><b>Individual advocacy</b><br/>The Public Advocate provides individual advocacy for many guardianship clients as well as for some individuals with a mental incapacity who are not under OPA’s guardianship. In 2016/2017, OPA provided 12 non-guardianship clients with advocacy. The range of issues OPA provided individual advocacy for included:</p> <ul style="list-style-type: none"> <li>• Appropriately resourced accommodation services</li> <li>• Choice and flexibility in relation to support services</li> <li>• Access to services such as allied health and healthcare services</li> <li>• Access to appropriate services and support for guardianship clients in prison</li> <li>• Access to appropriate services for clients in rural and remote areas.</li> </ul> |
| <p>(e) to give support to and promote the interests of carers of mentally incapacitated persons;</p>  | <p><b>Private guardians project</b><br/>The OPA has undertaken a project to enhance educational and information resources for guardians in the community, and people under guardianship. This was designed to produce information that is accessible to a broad audience and emphasises the rights of people under guardianship.</p> <p>A Private Guardian’s Manual has been produced and provides a comprehensive resource for private guardians on matters such as the principles that they are required to follow in their role, how to make decisions in compliance with those principles, making decisions which uphold the rights of people under guardianship, supported decision-making, and</p>  |

|   |   |
|---|---|
|   | <p>decisions that can be made informally without a Guardianship Order.</p> <p>The Office is also converting three of its Information Sheets to Easy Read format to increase accessibility for people with cognitive impairments, and people who are subject to a Guardianship Order.</p>  |
| <p>(f) to give advice on the powers that may be exercised under this Act in relation to mentally incapacitated persons, on the operation of this Act generally and on appropriate alternatives to taking action under this act;</p> | <p><b>Information and Education Service</b><br/>                 This service provides advice on the powers and operation of the GA Act, and has undertaken the following:</p> <ul style="list-style-type: none"> <li>• Delivered 32 information sessions to community groups</li> <li>• Provided education to 799 individual participants</li> <li>• Assisted 3088 callers via the telephone information service</li> </ul>  |
| <p>(g) to monitor the administration of this Act and, if he or she thinks fit, make recommendations to the Minister for legislative change;</p>   | <p><b>Supported decision making project</b><br/>                 The Office of the Public Advocate has undertaken a project on Supported Decision-Making (funded by the South Australian Law Foundation). This involved analysing the extent to which supported decision making has been evident in OPA guardianship decision making. The project recommended strategies for improving recording processes regarding decision making and further work to be done in order to then make recommendations regarding legislative change.</p>  |
| <p>(h) to perform such other functions as are assigned to the Public Advocate by or under this Act or any other Act</p>   | <p><b>Guardianship Service</b><br/>                 Guardianship is a key function of the OPA under the GAACT, and this year has provided the following services:</p> <ul style="list-style-type: none"> <li>• assisted 1219 guardianship clients across the year</li> <li>• assisted 304 new guardianship clients</li> <li>• attended 378 initial hearings</li> <li>• closed 278 guardianship matters</li> <li>• responded to 732 after hours emergencies</li> <li>• undertook 34 investigations for SACAT</li> </ul> <p>At year's end, OPA had 942 active guardianship clients.</p> <p><b>Dispute Resolution Service</b><br/>                 Dispute resolution services are a function assigned to the Public Advocate under the Advance Care Directive Act 2013. OPA provided the following services this year:</p> <ul style="list-style-type: none"> <li>• accepted 98 referrals</li> <li>• referred 19 disputes to SACAT</li> </ul> |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"><li>• resolved 59 disputes</li><li>• closed 34 referrals</li></ul> |
| <p>(2) A report furnished under this section must include prescribed particulars of all applications made by the Public Advocate for the issue of a warrant under this section during the year.</p> <p>There were no applications for warrants made by the Public Advocate during the year 2016/2017.</p> |  |

**Reporting required under the *Carers' Recognition Act 2005***

The *Carers' Recognition Act* is deemed applicable for the following: Department for Communities and Social Inclusion, Department for Education and Child Development, Department for Health and Ageing, Department of State Development, Department of Planning, Transport and Infrastructure, South Australia Police and TAFE SA.

*Section 7: Compliance or non-compliance with section 6 of the Carers Recognition Act 2005 and (b) if a person or body provides relevant services under a contract with the organisation (other than a contract of employment), that person's or body's compliance or non-compliance with section 6.*

*Not applicable for this agency*

## Section C: Reporting of public complaints as requested by the Ombudsman

### Summary of complaints by subject

| Public complaints received by Office of the Public Advocate |                     |
|---|---------------------|
| Category of complaints by subject                           | Number of instances |
| Decision review   | 2                   |
| Complaint   | 3                   |
| Ministerial   | 2                   |

Data for the past five years is available at:

<https://data.sa.gov.au/data/dataset/cf315477-d889-49d8-a326-f531fad1c12c>

### Complaint outcomes

| Nature of complaint or suggestion                           | Services improved or changes as a result of complaints or consumer suggestions |
|---|--|
| Complaints regarding guardianship practice or communication | Resolved   |
| Complaint regarding matters unrelated to guardianship       | Referred   |



## **Appendix: Audited financial statements 2016-17**

*Please refer to Attorney General's Department Annual Report*