



OFFICE OF THE PUBLIC ADVOCATE

2017-2018

ANNUAL REPORT

Office of the Public Advocate
85 North East Road, Collinswood
P: 08 342 8200 E: opa@agd.sa.gov.au
www.opa.sa.gov.au
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To:

The Hon. Vickie Chapman MP

Attorney-General

This annual report is presented to Parliament to meet the statutory reporting requirements of *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



28 September 2018

Signature

Date

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THE OFFICE OF THE PUBLIC ADVOCATE

PURPOSE AND 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 SERVICES PROVIDED BY OPA

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

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

Decision Making

When a person with impaired decision making guardian is required to make lifestyle, accommodation and/or health decisions and there is no other appropriate person to be appointed, the South Australian Civil and Administrative Tribunal (SACAT) may appoint the Public Advocate as *Guardian of Last Resort*.

Investigating

SACAT can direct the Public Advocate to investigate the circumstances of a person about whom it has received an application - a person who is considered to have an incapacity and to be at risk of some form of harm (physical, psychological or financial). The Office of the Public Advocate provides a report on the investigation to assist the SACAT to make a decision.

Resolving and Mediating

The *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1993* authorise the Public Advocate to provide information, preliminary assistance, and mediation to assist in the resolution of disputes about Advance Care Directives (i.e. health, accommodation or personal decisions) and medical treatment decisions. The OPA's Dispute Resolution Service works with people and other parties to resolve issues.

Informing and Educating

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

Advocating and Promoting Rights

The Office of the Public Advocate undertakes individual advocacy for its clients and some other individuals but is concerned mainly with systems level advocacy. The Public Advocate can make recommendations to the Attorney-General, Minister for Health and Wellbeing, the Minister for Human Services and the Minister for Housing for legislative and/or operational change, and can request the Attorney-General to submit a report on any matter to both Houses of State Parliament.

Innovating

The Office of the Public Advocate undertakes research and business improvement projects to enhance the delivery of key services.



HIGHLIGHTS FROM THE YEAR



Anne Gale, Public Advocate

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

In addition to the reform of disability services and the NDIS, the Office has been addressing the impact of other reforms in mental health and aged care. These reforms are designed to provide greater choice and control for people assessed as eligible for services, and include funding allocated to the person rather than a service provider.

These are significant social reforms and for OPA clients, they have been supported to make decisions about their support and services as far as possible.

The OPA is adapting to these reforms and changes in service delivery. The next few years will see more change to services including the implementation of supported decision making and consumer directed care.

The OPA has two projects in relation to supported decision making. One project, funded by the Law Foundation of South Australia examines and explores how the OPA adopts supported decision making for its clients. The other project, funded by the Lifetime Support Authority is implementing supported decision policy and practice.

In addition, the OPA has continued work on business process improvement; implementing technology to supports its work; and enhancing the reporting of systemic issues and reporting of serious incidents in relation to clients.

SNAPSHOT OF OUR WORK

The Office of the Public Advocate's provision of services to the South Australian community has increased this year. Across 2017/18, OPA has:

- ✓ assisted **1267** guardianship clients
- ✓ worked with **325** new guardianship clients
- ✓ closed **314** guardianship files
- ✓ received **98** dispute resolution applications
- ✓ responded to **3071** enquiries to our information service.

These figures reflect increased activity with individuals, family members, community members and organisations in the past year. More information on each area of our work can be seen throughout the report.

REFORM IN DISABILITY

The National Disability Insurance Scheme (NDIS) in South Australia was expected to be at full scheme by 30 June 2018 for people living with a disability. From 1 July 2018, people with psycho-social disability are expected to enter the scheme. Acceptance to the scheme has been delayed and the OPA continues to work with the National Disability Insurance Agency (NDIA) to develop plans for eligible participants. The Public Advocate has worked constructively with the Department of Human Services (DHS) to undertake detailed NDIS participant planning to ensure clients, as participants, are able to access the scheme and get the best plan possible for their future.

REFORM IN AGED CARE

The point of entry to a reformed aged care system - My Aged Care (MAC) – takes the form of a website and a Contact Centre. MAC provides information to consumers and their supporters as well as service providers. It includes an online service finder that link consumers to service providers, assessors and online fee estimators for different aged care services. Consumers vary significantly in their ability to access MAC and this is particularly so for people with impaired decision-making, including those under a Guardianship Order. It is often difficult for them to operate online computer systems. The Public Advocate has been working with other members of the Australian Guardianship and Administration Council (AGAC) and the Commonwealth

Department of Health to identify ways to access MAC and aged care services on behalf of people with impaired decision-making.

ELDER ABUSE

The issue of elder abuse has grown in profile over the past year with increasing action at both the federal and state levels. Over the past year, the Public Advocate has made submissions to the South Australian government's consultation processes about elder abuse including the potential for adult safeguarding legislation. In March 2018, the new government committed to introducing adult safeguarding legislation within its first 100 days and work is well progressed.

At the national level, the Australian Government committed to progressing a number of recommendations of the *Australian Law Reform Commission (ALRC) Inquiry into Elder Abuse* including the development of a national plan. The OPA has contributed to this process and the national working group, which the South Australian Government co-chairs.

MENTAL HEALTH

The Public Advocate was a Member of the Mental Health Commission Steering Group for the development of the new State Plan for Mental Health and the plan was released in December 2017. The OPA was a member of the Oakden Oversight Committee in response to the Chief Psychiatrist's report on the Oakden Older Persons' Mental Health Service (released April 2017). The Oakden Oversight Committee completed its work in June 2018.

On 28 February 2018, the Independent Commissioner Against Corruption (ICAC), Mr Bruce Lander finalised and published his report of the review of Oakden Older Persons Mental Health Facility. The report entitled 'Oakden: A Shameful Chapter in South Australia's History' showed findings of maladministration and 13 recommendations to improve services and accountability. A staff information session on the findings and recommendations of the report was delivered by the Public Advocate on 1 March 2018.

SUPPORTED DECISION-MAKING

During the year, the Office of the Public Advocate completed a project on Supported Decision-Making funded by the South Australian Law Foundation. The project examined the extent to which supported decision-making has been evident in OPA guardianship decision-making. The project recommended further work be undertaken to enhance recording and reporting of decision making as well as consider opportunities for law reform. The OPA was successful in seeking a second Law Foundation grant to progress this work and the second project has now commenced. In addition, the OPA received funding from the Lifetime Support Authority (LSA)

to develop a policy and practice framework for the LSA and this project commenced during the year.

AUSTRALIAN GUARDIANSHIP AND ADMINISTRATION COUNCIL (AGAC)

The Public Advocate attended two Australian Guardianship and Administration Council (AGAC) meetings during the year. AGAC is an inter-jurisdictional group comprised of the Public Guardians, Public Advocates, the heads of Boards and Tribunals (who deliberate on Guardianship and Administration legislation), and the State Trustees or Public Trustees.

The first meeting was in Perth on 19 October 2017 and the OPA, Public Trustee and SACAT hosted the second meeting in Adelaide on 9 March 2018. Key topics included guardianship, elder abuse, aged care quality systems, My Health Record, the NDIS Quality and Safeguarding Commission and supported decision making.

DECISION MAKING

The role of the Public Advocate in Guardianship

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

Further information about Guardianship can be found on the OPA website, Information Sheet No 4 - http://www.opa.sa.gov.au/resources/information_sheets

5 year data is available at <https://data.sa.gov.au/data/dataset/office-of-the-public-advocate>

Guardianship services are provided in two ways by the OPA. Guardianship clients are either delegated an individual guardian, or managed via a "team response." At 30 June 2018, there were 954 guardianship clients.

In December 2017, the OPA implemented a new system of allocating clients to individual guardians. The new early intervention initiative has reduced the need for a team response and results in more direct contact for clients. An evaluation of the initiative will occur in 2018-19.

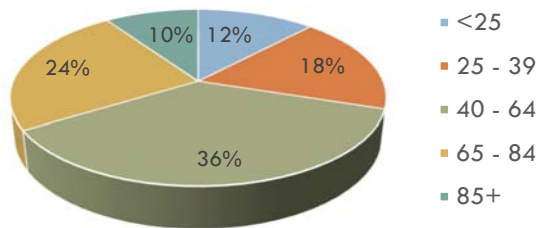
PROFILE OF CLIENTS UNDER GUARDIANSHIP

Clients under guardianship reflect the diversity of the community. However, at 30 June 2018, approximately 7.7 per cent of clients identified as Aboriginal, which highlights an over-representation of Aboriginal people under guardianship compared to the general population. In 2017-18, there were 74 Aboriginal clients compared to 77 clients in the previous year.

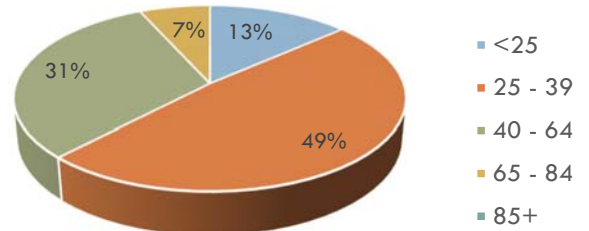
In 2017-18, 55 per cent of guardianship clients were male and 45 per cent were female. For Aboriginal clients 66 per cent were male and 34 per cent were female.

The age profile of guardianship clients shows that around a third (36 per cent) of all clients are in the middle age group of 40-64 years old. The age profile of Aboriginal clients shows a higher representation of younger clients aged between 25 and 39 years old (49 per cent). There was a much lower representation of Aboriginal clients in the older age groups and no Aboriginal clients aged 85 years and over in 2017-18.

Age profile of all active clients



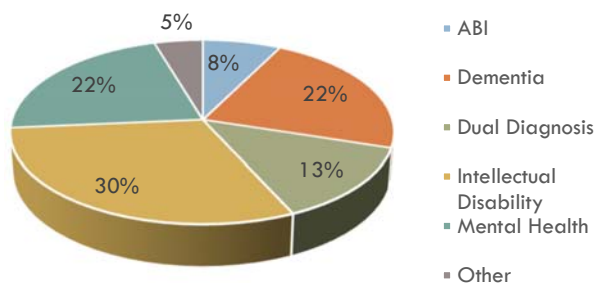
Age profile of active Aboriginal clients



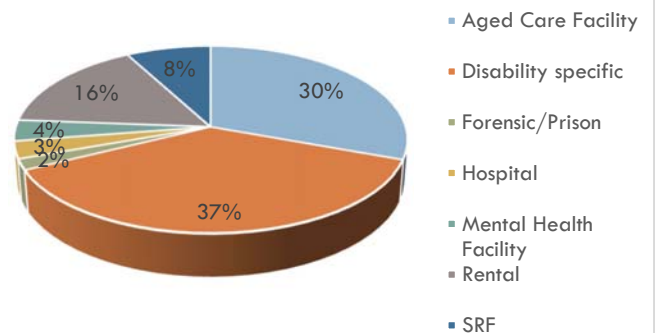
Client Disabilities

In 2017-18, intellectual disability (30 percent), mental health conditions (22 per cent) and dementia (22 per cent) were the main client disabilities. This is similar for Aboriginal clients but dual diagnosis was more prevalent than dementia for Aboriginal people under guardianship.

Client Disabilities



Client Accommodation Snapshot



Accommodation

Approximately 68% of guardianship clients reside in supported accommodation. A small group of clients are at a forensic service or prison, in hospital or a mental health facility. Another small group (not shown on the graph) are in inpatient rehabilitation and for a handful of clients there is no available accommodation data.

GUARDIANSHIP ACTIVITY IN 2017-18

Active cases

Over the past decade, there has been a 110% increase in guardianship matters. Over the past five years, an average of 1260 South Australians have received guardianship services from the OPA. There was a 3.9% increase in total guardianship matters than the previous year. At 30 June 2018, the OPA had 954 active guardianship matters.

| Guardianship | 2016-17 | 2017-18 | % ↑/↓ |
|---|----------------|----------------|--------------|
| Total number of active OPA guardianship matters | 1219 | 1267 | 3.9% ↑ |
| Total number of active OPA guardianship matters at 30 June 2018 | 942 | 954 | 1.3% ↑ |

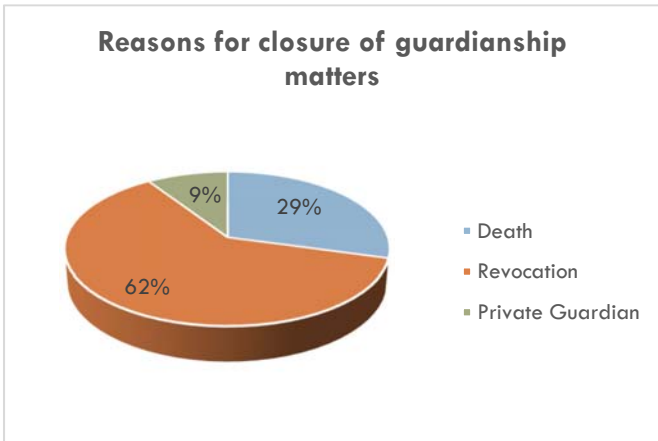
New appointments

The OPA attends initial SACAT hearings (screenings) of guardianship applications where the Public Advocate has been nominated as potential guardian on the application. In 2017-18, there were 418 applications for potential guardianship and the OPA was appointed as guardian for 325 South Australians with impaired decision-making (78 per cent). There was a small increase in both guardianship applications and new appointments in 2017-18.

| Guardianship | 2016-17 | 2017-18 | % ↑/↓ |
|--|----------------|----------------|--------------|
| Total number hearings at SACAT for guardianship applications | 378 | 418 | 10.5% ↑ |
| Total number of new OPA guardianship matters | 304 | 325 | 6.9% ↑ |
| Total number of OPA guardianship matters closed | 278 | 314 | 12.9% ↑ |

Closures

In 2017-18, 314 guardianship matters were closed which represents 24.7 per cent of all guardianship matters for the year. Over the past five years, the closure of guardianship matters has been between 20 and 28 per cent of all matters. Of the 314 closed guardianship matters, 87 matters (27 per cent) were in place for over three years. The majority of closed guardianship matters were revoked, followed by death of client and the appointment of a private guardian. Revocations are sought by the OPA where it is believed that there is no longer a role for an OPA guardian.



| Length of guardianship matter | n. of closed matters |
|-------------------------------|----------------------|
| <1 mth | 35 |
| 1-<3 mth | 18 |
| 3-<6 mth | 19 |
| 6-<12 mth | 38 |
| 1 yr-<2yr | 65 |
| 2-<3yr | 52 |
| 3+ yr | 87 |
| Total | 314 |

Decisions

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

In 2017-18, the main decision types recorded were for accommodation (34 per cent), healthcare (27 per cent) and lifestyle (21 per cent). Decisions on access (10 per cent), service/support (7 per cent) and ECT (< 1 per cent) were also made during the year.

Special Powers are exceptional orders made by the SACAT under section 32 of the *Guardianship and Administration Act*. In 2017-18, the OPA staff made 75 decisions regarding s32 special powers.

Special powers can include:

- a direction that a person lives or temporarily stays in a particular place, with a particular person or where an appropriate authority says a person should live and stay.
- authorisation to detain the person at the place they have been directed to live or stay
- to authorise the use of force to make sure that a person receives proper treatment and care.

After hours emergency response

The OPA provides an after-hours telephone service on weekdays and 24 hours on weekends and public holidays. The service provides an urgent response for clients and service providers including matters that may require an application to SACAT for urgent orders. In 2017-18, the OPA responded to 786 after-hours calls with a monthly average of 71 calls. A random sample

of 95 calls showed that over one-third of calls related to medical issues. The remaining calls concerned homelessness, car breakdown, leaving accommodation, arrest, assault, and some client calls.

Litigation guardianship

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

When appointed by the Court, the Litigation Guardian's role is to support the client to articulate their instructions. Where this is not possible, a Litigation Guardian may be required to provide substitute instructions on the person's behalf. The OPA opened seven new litigation files during 2017-18.

| Litigation Guardianship | 2016-17 | 2017-18 |
|--|----------------|----------------|
| Total number of Litigation Guardianship appointments | 2 | 7 |

Warrants

A warrant is a written authority to apprehend a person under the s69 of the *Guardianship and Administration Act* to take them to a psychiatrist, psychologist or medical practitioner nominated by SACAT for examination and assessment. In 2017-18, the Office of the Public Advocate made one application for a warrant which was issued by SACAT on 23 November 2017.

| Legislative Warrants | Particulars as per s 24(2) of the Act |
|--|---|
| The number of applications for warrants | 1 |
| The age, sex, alleged mental incapacity of the persons whom the applications related | 93 years old, female with cognitive impairment |
| The grounds on which the applications were based | Reasonable grounds existed that the person had a mental incapacity and that a warrant was required to enable an assessment by a suitably qualified health professional to assess the person's legal capacity to make decisions. |

| | |
|--|---|
| The number of applications withdrawn during the year | 0 |
| The number of warrants issued during the year | 1 |
| The number of warrants refused during the year | 0 |
| The age, sex, alleged mental incapacity of the persons whom the warrants related | 93 years old, female with cognitive impairment |
| The grounds on which the warrants were issued | Reasonable grounds existed that the person had a mental incapacity and that a warrant was required to enable an assessment by a suitably qualified health professional to assess the person's legal capacity to make decisions. |
| The action taken under the warrant | The warrant allowed a Consultant Geriatrician to visit the person in her home and undertake medical assessments. The Consultant geriatrician obtained entry and was able to undertake observation and preliminary assessments. |

Individual Advocacy

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

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

| Advocacy | 2016-17 | 2017-18 |
|---|----------------|----------------|
| Total number of non OPA guardianship clients who received individual advocacy | 12 | 19 |

Complaints and decision reviews

Complaints may relate to decisions made by OPA staff, communication concerns, or other matters. In 2017-18, the OPA responded to seven complaints/decision reviews, six ministerials and eight Freedom of Information requests.

| Complaints/Information Requests | 2016-17 | 2017-18 |
|--|----------------|----------------|
| Total number of Complaints/Decisions reviews | 5 | 7 |
| Total number of Ministerials | 2 | 6 |
| Total number of FOI Requests | 2 | 8 |



INVESTIGATING

INVESTIGATIONS

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

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

| Complaints/Information Requests | 2016-17 | 2017-18 |
|---|----------------|----------------|
| Total number of OPA investigations undertaken for SACAT | 34 | 26 |
| Total number of OPA investigations finalised for SACAT | 24 | 20 |



RESOLVING AND MEDIATING

Dispute resolution

The Office of the Public Advocate (OPA) is authorised to resolve disputes that are relevant to two Acts:

1. The *Advance Care Directives Act 2013* and
2. The *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act).

There are two types of circumstances where the Public Advocate will mediate:

- a. If a person has made an Advance Care Directive and there is disagreement about health, accommodation or personal decisions that need to be made for them. This includes people who have made an Enduring Power of Guardianship, a Medical Power of Attorney or an Anticipatory Directive prior to July 1st 2014.
- b. If a person does not have an Advance Care Directive and there is disagreement about health care and/or medical treatment. This includes disputes involving children under 16 years of age.

WHAT IS AN ADVANCE CARE DIRECTIVE?

An **Advance Care Directive** is a legal document that empowers a person over 18 years of age to document their instructions, wishes and preferences for future health care, accommodation and personal matters. It can also be used to appoint one or more substitute decision makers to make decisions on the person's behalf should their decision-making capacity become impaired.

Legal documents made prior to July 1st 2014 continue to be valid and are treated as if they were made under the *Advance Care Directive Act 2013*. See also information on the OPA website - http://www.opa.sa.gov.au/resources/information_sheets

THE DISPUTE RESOLUTION SERVICE

To fulfil the responsibilities of the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*, the OPA operates the Dispute Resolution Service (DRS). The qualified mediators are experienced in working with vulnerable people and complex conflict situations. The OPA's dispute resolution and mediation model is *rights-based* and *person-centred* enabling participants who disagree to come together in a collaborative way to discuss the issues in dispute, and develop options to resolve those issues. Paramount is the rights of the person at the centre of the dispute, ensuring that their voice is heard in the resolution process, especially if they are not able to participate directly – for example, because of impaired decision-making capacity.

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

The OPA DRS process ensures that the focus is on the values, wishes and views of the person who has made the Advance Care Directive, preserving wherever possible their choice of substitute decision maker, and upholding the directions set out in their Advance Care Directive.

Dispute resolution in 2017-18

Applications made to the Dispute Resolution Service often involve conflict between family members in regard to a person with a significant level of cognitive impairment. In 2017-18, reasons for the applications included:

- challenges to the validity of an Advance Care Directive.
- allegations of abuse of an older person, in particular, neglect of proper care and protection
- family members and others being denied access to the person or information
- disputes over accommodation decisions
- disputes over the end-of-life decisions of a person who was palliative
- substitute decision makers wanting to renounce their appointment or people seeking to revoke the appointment of the substitute decision-maker(s) and
- challenges to the decisions of substitute decision-makers.

New applications

In 2017-18, there was a total of 112 active OPA DRS matters. The number of new applications has remained consistent over the past two years with 98 new applications received in 2017-18.

| Dispute Resolution Service | 2016-17 | 2017-18 |
|---|----------------|----------------|
| Total number of active DRS applications | 121 | 112 |
| Total number of new referrals/matters to the OPA Dispute Resolution Service | 98 | 98 |

Closures

In 2017-18, **105** dispute cases were closed (94 per cent of active matters). The most common reason for closure was resolution of the dispute totalling 44 matters. The 44 matters were resolved with agreements being reached that upheld the rights of the person who had made the Advance Care Directive. These resolutions prevented the matters proceeding to SACAT which, could have resulted in the person's Advance Care Directive being revoked and the Public Advocate being appointed guardian.

In resolving disputes, mediation participants were able to resolve the immediate issues and develop communication plans that would assist the parties to resolve any future conflicts in an amicable way. Resolving disputes can remove the burden of conflict that can negatively impact upon the person and reduce the support of those involved in the dispute.

| Dispute Resolution Service | 2016-17 | 2017-18 |
|--|----------------|----------------|
| Total number of disputes resolved | 59 | 44 |
| Total number of dispute matters closed/finalised | 34 | 24 |
| Total number of disputes referred to SACAT | 19 | 25 |
| Total number of applicant withdrawn | 7 | 9 |
| Total number of deceased clients | 2 | 3 |
| Total | 112 | 105 |

Mediation is voluntary and was refused in 17 matters. In 11 of these matters, the applicant decided not to proceed to SACAT and in 6 matters the applicant requested that the DRS refer the matter to SACAT. Referrals to SACAT included:

- the need for declaration about the validity of documentation
- the matter involved elder abuse
- parties were unwilling to mediate

- directions were sought from SACAT
- there was no Advanced Care Directive in place or
- the client wished to revoke their Advanced Care Directive but lacked the capacity.

2017-18 case outcomes below

| Number of active disputes in 2017-18 | 112 |
|---|------------|
| Number of disputes resolved by DRS | 44 |
| Client deceased prior to conclusion of matter | 3 |
| Number of applications for dispute resolution withdrawn | 9 |
| Number of matter closed by DRS | 24 |
| Number of matters referred to SACAT by DRS | 25 |
| Matters ongoing at 30/6/18 | 7 |

The OPA Dispute Resolution Service Case Study Mrs Brown

Mrs Brown was an eighty four year old woman, with advanced dementia, living in an aged care facility. She had made an advance care directive appointing her husband as her substitute decision maker and Enduring Power of Attorney.

The OPA DRS received an application from Mrs Brown's son Simon. He stated that there was conflict between himself, Mr Brown and his sister Emily. The conflict was mainly due to Simon challenging past financial transactions made by Mr Brown and Emily. Although there had been resolution to the financial dispute, Mr Brown now refused to let Simon visit his mother. Emily supported this decision.

In conducting mediation the DRS found that Mrs Brown's ability to communicate was quite impaired and she was unable to express a view. However, there was evidence to indicate that when Mrs Brown had decision making capacity, she chose to have interaction with her son, knowing that there was a dispute over financial matters.

During mediation, the family were informed of the principles of the *Advance Care Directives Act 2013* and the how a substitute decision maker must give effect to an advance care directive. As the family discussed the issue they agreed to put their own conflict aside and

focus on what Mrs Brown would want. They agreed that Mrs Brown had always wanted to have contact with Simon and that if she could communicate her wishes, she would still like to see him. Although Mr Brown and Emily did not want to have contact with Simon, Mr Brown agreed that Simon could visit his mother. To avoid contact with each other, the family were able to agree on days and times that all could visit Mrs Brown without having to meet each other.

Following the dispute resolution process, the aged care facility staff who supported Mrs Brown reported that she 'lit up' when Simon visited. The visits went well and as they were conducted in the early evening. Staff indicated that the interaction with Simon assisted Mrs Brown to settle well for the night.

Three months after the mediation, Simon contacted the OPA DRS with the sad news that Mrs Brown had passed away. Simon was thankful that he had been able to visit his mother regularly since the mediation, and that he was able to hold her hand as she passed away.



INFORMING AND EDUCATING

The provision of information and education to community members, health professionals and service providers is an important role of the OPA. Topics covered by the Information and Education Service included adult protection legislation, the SACAT application process, information on decision-making capacity, supported decision-making, substitute decision-making and the role of the Dispute Resolution Service and Guardianship Service.

Information is provided in three main ways:

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

INFORMING THROUGH THE OPA WEBSITE

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

- **29 Information Sheets** on the functions of OPA
- Frequently Asked Questions
- Application forms (eg for Mediation and Dispute Resolution Services)
- The Supported Decision-Making
- Discussion Papers and Submissions
- Annual Reports
- Useful links

THE OPA INFORMATION SERVICE

The Information Service can be contacted by phone, letter, and email or by visiting the Office and operates during business hours. Information and advice is provided on a diverse range of issues affecting people with impaired decision-making such as rights information, care and

treatment of people, applications to SACAT for Administration and Guardianship Orders and guardianship. If appropriate, the OPA Information Officer makes referrals to other agencies. Duty Guardians provide back-up advice regarding more complex matters.

Enquiries

In 2017-18, the OPA recorded **3,071** enquiries to the Information Service and on a wide range of issues. The three most common enquiries concerned Administration matters (765) and Guardianship matters (685) and Advanced Care Directives (490).

| Information and Education services | 2016-17 | 2017-18 |
|--|----------------|----------------|
| Total number of visitors to the OPA website | 29710 | 31277 |
| Total number of callers to the OPA Information Service | 3088 | 3071 |

OPA EDUCATION SESSIONS

The Office provides information about the *Guardianship and Administration Act 1993*, the *Mental Health Act 2009*, the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

| Information and Education services | 2016-17 | 2017-18 |
|---|----------------|----------------|
| Total number of education sessions | 32 | 31 |
| Total number of attendees at education sessions | 799 | 629 |

A number of the education sessions delivered focused on the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995* for the benefit of staff from local health networks and aged care services. The response has been positive and the OPA will continue these sessions in 2018-19.

ADVOCATING AND PROMOTING RIGHTS

Advocacy explained

The Office of the Public Advocate undertakes advocacy on behalf of individuals, but its primary focus is at the level of systems. This involves drawing attention to issues that affect its target client population, such as the impact of reforms in the aged care, mental health and disability service systems for vulnerable people who lack the capacity to engage with the reforms. Systems-level advocacy includes the Public Advocate making recommendations to Ministers, usually with portfolio responsibilities in health, disability, mental health, housing or aged care.

ADVOCACY AND PROMOTING RIGHTS IN 2017-18

DISABILITY SERVICES

In 2017-18, the Office of the Public Advocate undertook systemic advocacy concerning guardianship clients accessing disability services, particularly the National Disability Insurance Scheme (NDIS). Other issues included the use of restrictive practices and appropriate accommodation for clients with disability. Advocacy assists the Public Advocate to undertake the legislative functions concerning review of public and private programs, identification of areas of unmet needs and promoting the rights of people with impaired decision-making.

The OPA held a six-weekly Disability Forum with key stakeholders concerning issues arising in the disability sector and provided a co-ordinated response to issues and unmet need. In 2017-18, issues included:

- the new Disability Inclusion Act 2018
- the NDIS
- the use of restrictive practices
- appropriate accommodation for people with disability
- placement of disability clients within James Nash House,
- oversight of supported residential facilities and boarding houses
- supported decision-making.

National Disability Insurance Scheme (NDIS)

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

Prior to commencement of the full rollout, the OPA undertook a mapping exercise to plan and support the transition of its guardianship clients. The OPA worked with the Department of Human Services (DHS) and the National Disability Insurance Agency (NDIA) and approximately 600-650 guardianship clients were identified as eligible to transition. An additional 28 new Guardianship orders were granted appointing the Public Advocate as guardian for individuals. The majority of OPA clients were expected to transition before 30 June 2018, however delays with implementation saw lower transition numbers. In 2017-18, the OPA data shows that OPA staff attended 75 NDIS related meetings and 56 NDIS Plans were approved for guardianship clients. Internal procedures were developed to assist staff in their decision-making and advocacy roles for clients accessing the NDIS.

During the year, the OPA participated in regular NDIS related meetings, stakeholder forums and workshops, including:

- Monthly meetings between the NDIA and the Public Advocate
- Inter-jurisdictional meetings of public guardians and justice agencies on NDIS implementation
- NDIS Stakeholder Forum – Key Influencers and Peak industry Group
- NDIA and DCS Interface Working Group
- NDIS Mental Health Implementation Group
- NDIS Quality and Safeguards Commission Forum
- NDIS Quality & Safeguards Information Sharing Workshop with SA Regulatory Bodies
- NDIA workshop on nominee arrangements and access to the NDIS portal.
- SA Disability Reform Program Steering Committee – Quality and Safeguards Sub Committee.

NDIS implementation issues and outcomes raised by the OPA in various forums

| Issues raised | Outcomes achieved |
|---|---|
| Consistency with the transition process for clients from SA Disability Services to the NDIS | Recognition and development of complex client pathways for NDIS transition. Ensuring OPA clients have access to service coordination within their NDIS plans |
| The impact of services that are not funded under the NDIS | Addressing issues for adults in adult foster placements who were at risk of homelessness due to the impact of the NDIS on funding arrangements |
| NDIS arrangements for crisis and after hours issues, such as accommodation breakdown and homelessness | Ensuring OPA clients have funds for critical services such as emergencies after business hours |
| Guardians and NDIS Nominee arrangements | Issue escalated to the national level after advocacy from public advocates/guardians nationally. |
| Access to the NDIS portal | Escalation to the national level for further work. |

Use of restrictive practices

The OPA monitors the use of restrictive practices within disability settings and records unauthorised restrictive practices. For each client, the OPA ensures appropriate SACAT authorisations and where applicable a Positive Behaviour Support Plan before consenting to use.

In 2017-18, the OPA provided advice to individuals and services about the use of restrictive practices. Education sessions are available to service providers with one session delivered during the year. Continuing education within the disability sector is key to ensuring a reduction in the use of these practices.

The OPA commenced working with the NDIS Quality and Safeguard Commission prior to its formal establishment on 1 July 2018. The relationship between the two agencies is to ensure effective and consistent responses about the use of restrictive practices are provided to NDIS providers and to capture emerging trends or concerns. The OPA continues to work with the SA DHS on the ongoing review and development of the restrictive practices guidelines.

UNMET NEED

Appropriate Accommodation

It is recognised that demand outstrips the supply of suitable accommodation options for clients with disability, particularly the preferred models of cluster and supported accommodation. The shortage of appropriate accommodation contributes to lengthy wait periods for clients. Supply favours the group home model which, offers little choice to clients about who they live with and limited flexibility about the structure of daily activities. There is a need for an increased supply of supported accommodation with tailored services to meet individual need and choice.

The provision of 100 disability specific homes as part of the *1000 Homes in 1000 Days* initiative by Housing SA was scheduled for delivery in 2018. It is intended that 50 homes be fitted with assistive technology as part of the Commonwealth's Specialised Disability Accommodation Initiative. Approximately 15 OPA disability clients are under consideration for this accommodation.

The 100 disability specific homes is a welcomed initiative, however accommodation continued to be an issue for clients with disability. Sometimes, the OPA can be required to make accommodation decisions based on available resources rather than a person's expressed wish. When this occurs, the OPA advocates to ensure that the accommodation meets a client's needs and wishes as far as practicable. As the NDIS market expands, the OPA is hopeful that providers will develop different types of accommodation options such as cluster and supported accommodation with flexible options.

Separate disability and mental health forensic services

At present, South Australia's forensic disability and mental health services are both accommodated at the South Australian Forensic Mental Health Service (James Nash House). However, both client groups have very different needs and require different models of support. In 2017-18, the Public Advocate was a member of the James Nash House Oversight Committee and met with senior staff and clients on visits to the service. Client visits assist the Public

Advocate to become familiar with the issues of both client groups in DCS custody accommodated at the service. The OPA continues to work closely with staff at James Nash House and more recently with the NDIA to ensure individual and systemic issues relating to NDIS transitions for these clients are resolved.

Addressing unmet need in the disability sector

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

- A **range of accommodation options for disability clients** that support choice and flexibility, including individual and cluster accommodation.
- Consistent responses regarding the use of restrictive practices as well as properly **resourced and suitably trained positive behaviour specialists**
- A specialised **forensic disability service** with suitably trained staff and specialist input and increased bed capacity for disability clients.

MENTAL HEALTH SERVICES

In 2017-18, the OPA undertook systemic advocacy concerning older people and mental health services, community accommodation options, mental health service provision, facilities for forensic patients and discharge pathways from hospital.

Oakden Older Person's Mental Health Service

The provision of services for older people with mental health conditions was a key issue for the OPA in 2017-18. In April 2017, the Chief Psychiatrist released the Oakden Report, a 'Review of the Oakden Older Persons Mental Health Service'. In June 2017, the SA Health Oakden Response Plan Oversight Committee was established and the OPA was a member. The Committee provided oversight and guidance to SA Health in implementing the six recommendations in the Oakden Report and completed its work in June 2018.

The OPA also undertook an internal review in relation to complaints, incidents or concerns about care and treatment of clients at Oakden. Improvements to policies and procedures were developed in late 2017 and progressed during 2018. This included updating the OPA's Notification policy and procedure that ensures all incidences of assault, unauthorised use of restrictive practices, unexplained death or any other serious issue are brought to the immediate attention of the Public Advocate and senior OPA staff. This information is used to monitor adherence to procedures with regular analysis of trends or systemic concerns.

With the staggered closure of the Oakden facility between June and September 2017, 13 clients under guardianship were transferred to alternative facilities. This included six clients transitioning to Northgate House - Neurocognitive Older Person's Mental Health Service. The OPA monitors clients that have transitioned through client visits, the enhanced OPA notification process and regular meetings with senior staff. The Public Advocate was a member of the Northgate House Safety, Quality & Risk Committee and provided input into quality and safety policies and procedures and the accreditation process.

Appropriate Accommodation

Suitable accommodation options and flexibility in choice of provider and support continued to be an issue for guardianship clients living with chronic and complex mental health issues. Of the 100 disability specific homes, 31 houses have been allocated to psycho-social clients with at least 17 OPA clients under consideration for this scheme.

Supported Residential Facilities (SRFs) provide accommodation and care services for people with disability, mental illness and older people in a group setting and are privately operated

and regulated by the *Supported Residential Facilities Act 1992* (SA). The Public Advocate visited a number of SRF's over the past 12 months to monitor service delivery as well as understand the challenges for providers in developing a business model under NDIS.

Approximately 6.5% of clients under guardianship reside in supported residential facilities. Approximately 70% are male and 30% female and at least half of all clients under guardianship in SRFs have a mental health diagnosis. There are a number of challenges associated with the SRF accommodation model such as:

- shared bedrooms resulting in a lack of privacy
- no female-specific SRFs, leaving women clients particularly vulnerable.

During 2017-18, the Public Advocate conducted informal visits to metropolitan mental health services. Services visited included

- Cramond Clinic and Older Persons Mental Health Service at Queen Elizabeth Hospital
- Royal Adelaide Hospital Acute Mental Health Unit, Emergency Department and short stay mental health unit
- Modbury Hospital Mental Health Unit and
- The Priority 1 inpatient rehabilitation ward and Jamie Larcombe Centre Veterans Mental Health Precinct at Glenside Health Services.

NDIS

In the lead-up to the commencement of psycho-social clients transitioning to the NDIS scheme, the OPA began building links with mental health services and non-government organisations providers. The OPA has provided significant advocacy in relation to the lack of flexibility and choice in support and accommodation for psycho-social clients.

Work has commenced to prepare and support psycho-social clients who are scheduled to transition to the NDIS. The OPA is a part of SA Health's NDIS Mental Health Implementation Group whose purpose is to establish a consistent approach for psycho-social clients and to identify significant individual, operational and systemic issues as they arise. The aim is to have all psycho-social clients in the scheme by 30 June 2019.

UNMET NEED

The OPA has identified a number of areas of unmet need for people living with mental health issues and monitors and advocates on these issues:

- Clients can spend lengthy periods in acute care settings waiting for appropriate accommodation. Although some mental health consumers have access to accommodation options, such as HASP (Housing and Support Package), this level of support is insufficient to meet the needs of many clients with chronic and complex mental health presentations. Additionally, these models of care traditionally have a recovery focus which may be a barrier for OPA clients accessing this type of accommodation.
- Supported Residential Facilities (SRFs) and boarding houses are not suitable for many mental health consumers and on occasion, OPA staff need to accept this type of accommodation as an alternative to homelessness.
- The SRF sector has significant variations in living standards, and clients have reported variable living environments on visits.
- There is variation in response rates of mental health services across regions, making ongoing service provision difficult to access at times.
- Consumers want to maintain their level of independence, but many are challenged by the restricted availability of support services.
- The Public Advocate has visited several acute psychiatric facilities over the past 12 months and specific issues or concerns were raised with the appropriate authority.

Addressing unmet need in the mental health sector

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

- Development of a **broad range of accommodation options** that includes access to independent living accompanied by 24-hour support.
- Consumer-led increased **choice of service provider**.
- Strategies to **enhance mainstream services' awareness** of the issues faced by people with mental health needs, and support to access services.
- Enhanced **collaboration between disability and mental health services** to ensure that clients do not slip between

AGED CARE

My Aged Care

Reform in the aged care system has been occurring since the implementation of the *Living Longer, Living Better* (2012) initiative that gives the consumer greater choice and control over the services they receive. The ability to engage with the reformed system can present particular challenges for consumers with impaired decision-making. Approximately 25% of guardianship clients reside in aged care facilities with other clients are in receipt of aged care services.

In July 2017, a Legislated Review of Aged Care was completed and included a recommendation for the Australian Government to introduce an aged care system navigator and outreach services to assist people who have difficulty engaging with My Aged Care.

In November 2017, SA/NT Health State Network of the Department of Health (Cwth) presented to Statutory Authorities and Rights Protection Group on system improvements to My Aged Care to better support people with complex needs. It was reported that changes have been implemented to ensure clients with diverse needs receive appropriate assessment and aged care services and that the aged care sector has a better understanding of the referral process.

The My Aged Care registration process for professionals has been streamlined but an institutional login is still preferred. Improvements to the My Aged Care system have been informed by submissions and advocacy by the OPA and the Australian Guardianship and Administration Council (AGAC).

Also last year, policy options for future aged care at home were being developed by the Department of health (Cwth) in consultation with the sector. The OPA provided a submission on *Future reform- integrated care at home program to support older Australians*. Improved care at home could assist in maintaining informal arrangements, prevent premature admissions to residential aged care and shorten hospital stays.

The OPA wrote to the Department of Health (Cwth) advising that My Aged Care staff and some aged care service providers were not recognising South Australian Enduring Power of Guardianship documents made prior to the implementation of the *Advance Care Directives Act 2013* (SA) on 1 July 2014. In January 2018, the Public Advocate subsequently wrote to all South Australian aged care providers to advise that existing Enduring Powers of Guardianship made before 1 July 2014 are valid. In June 2018, the OPA gave a tailored interactive information session called **'What's What?'** for aged care facilities on decision-making documents including

Enduring Power of Attorney and an Advance Care Directive and outlined the purpose of each document and the role of aged care facilities.

UNMET NEED

In 2017-18, the OPA continued to monitor and advocate on issues arising from the aged care reforms and raised in the 16-17 OPA annual report. They include:

- Changes affecting the provision of Home Care Packages. Consumers also expressed concern that accepting residential respite care services (which is limited by legislation to a maximum of 63 days), will see them entering long term residential care while awaiting a Package, having their name removed from a “national priority queue”, and losing the opportunity to return to living at home.
- Information on Package allocation relies on written notification and is at risk of being lost, or not identified, when the consumer is living with cognitive impairment and with no informal support network. In addition, the aged care system does not recognise the role of the Public Advocate as the guardian. This creates a time-consuming system when the OPA tries to liaise with service providers and assessment teams.
- OPA staff report that people who are able to pay a Residential Accommodation Deposit in full tend to secure a residential care place more easily than people who are concessional or unable to secure the full amount within a short period of time.
- Vulnerable consumers are at even greater risk than other older people of being forced to undergo multiple assessments, particularly when their needs intensify.

ELDER ABUSE

Promoting the Rights of Older People and Preventing Elder Abuse

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

Following on from the Australian Legal Reform Commission Inquiry into Elder Abuse¹ in June 2017, both the Federal and South Australian Governments have committed to developing strategies to address abuse of older vulnerable adults. At the national level, the Council of Attorney Generals (CAG) agreed to develop Australia's first National Plan on Elder Abuse by the end of 2018. A National Plan is a key recommendation of the ALRC Report 131. The Public Advocate participated in the South Australian consultation and will continue to provide input into the development process.

The OPA also provided a submission to the Senate Community Affairs References Committee's inquiry on the Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices.

In December 2017, the OPA took part in 'Gallery Walks', the purpose of which was to inform the community about the South Australian Government's Community Consultation process for the 'Elder Abuse Responses Discussion Paper'. The discussion paper had three key areas:

- Area 1: Strengthening Awareness
- Area 2: Increasing Responses
- Area 3: Considering Legislation

The OPA provided its submission on the 'Elder Abuse Responses Discussion Paper' in January 2018. The OPA's response referred to The *Closing the Gaps: Enhancing South Australia's Response to the Abuse of Vulnerable Older People Report* produced by the OPA in collaboration with the University of South Australia particularly the recommendation on comprehensive legislation for the protection of vulnerable adults.

In April 2018, the OPA made a submission to the SA Health's Office of Ageing paper for the development of safeguarding legislation for all vulnerable adults. In May 2018, the OPA

¹ Elder Abuse – A National Legal Response (ALRC Report 131) Published 14 June 2017

provided comments on the *Office for the Ageing (Adult Safeguarding) Amendment Bill* and welcomed its introduction into the South Australian Parliament on 20 June 2018.

The OPA looks forward to working with key stakeholder in the next phase of work leading from the proposed legislation.

The key points for the next phase of work from the OPA's perspective include:

- the development of the service model
- referral processes to relevant agencies
- the interface of the proposed legislation with the *Guardianship and Administration Act 1993*
- information sharing protocols including the Information Sharing Guidelines
- the option of establishing or utilising an existing reference group for the implementation of the legislation, regulations and service model.

The Alliance for the Prevention of Elder Abuse (APEA)

The Alliance for the Prevention of Elder Abuse (APEA) is comprised of representatives of the OPA, Public Trustee, Aged Rights Advocacy Service, Legal Services Commission and the South Australian Police. APEA was formed in 1998 and has been successful in promoting the rights of older citizens, raising awareness about elder abuse and promoting strategies for the prevention and response to abuse. During the year, member agencies presented at a number of community and professional forums to ensure this information is distributed as widely as possible to professionals and community members.

The *Protecting Older South Australians* video series produced by the APEA in June 2017 provides advice from member organisations on how to assist older community members at risk or experiencing abuse. In 2018, Wallis Cinemas screened the video in their cinemas as a pre – movie promotion. The video can be viewed http://www.opa.sa.gov.au/planning_ahead

APEA has a range of information sheets including advance directives which offers simple explanations about these documents, their usefulness as tools of empowerment and safeguards that can be included in them. The Alliance is currently working on updating the information sheets.

Dementia and Supported Decision Making

The OPA seeks to promote the rights of older people by ensuring they are able to make their own decisions for as long as possible and to be supported to make decisions if they have difficulty doing so.

The OPA has been a member of the Supported Decision Making Interest Group for a project undertaken by a research team within the NHMRC Cognitive Decline Partnership Centre. The aim of the project is to ensure that the person with dementia is included in all stages of decision making about their lives and will develop resources to guide policy development for aged care providers and for people, families and carers living with dementia.

In 2017-18, the Public Advocate met with key Ministers and Members of Parliament to discuss systemic issues (see overleaf).

PUBLIC ADVOCATE MEETINGS WITH MINISTERS AND MEMBERS OF PARLIAMENT

1 July 2017 – 30 June 2018:

As the table below indicates, the Public Advocate has raised a range of issues with Ministers and other Members of Parliament during the past year.

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

1 July 2017 - 16 March 2018:

- Hon John Rau, Attorney-General
- Hon Leesa Vlahos, Minister for Disabilities, Minister for Mental Health and Substance Abuse
- Hon Zoe Bettison, Minister for Social Housing, Minister for Ageing
- Hon Katrina Hildyard MP, Minister for Disabilities
- Hon Peter Malinauskas MLC, Minister for Mental Health and Substance Abuse
- Hon Vickie Chapman MP, Shadow Attorney-General
- Hon Stephen Wade, MLC, Shadow Minister for Health and Ageing
- Hon Michelle Lensink MLC, Shadow Member for Human Services

19 March 2018 – 30 June 2018:

- Hon Vicki Chapman MP, Attorney-General
- Hon Stephen Wade MLC, Minister for Health and Wellbeing
- Hon Michelle Lensink MLC, Minister for Human Services

During these meetings, the Public Advocate raised and discussed a range of issues including:

- Community education on Advance Care Directives
- Elder abuse
- Operational issues with the National Disability Insurance Scheme
- The My Aged Care portal and the challenges it raises for many older people

- Services for older vulnerable people and national reforms in aged and disability care
- The Oakden Older Persons' Mental Health Service
- Inpatient Rehabilitation Services and appropriate accommodation and support at discharge
- Supply of supported accommodation
- Forensic mental health patients including time in prison and access to services and accommodation and the co-location of forensic mental health and disability services.

The Office of the Public Advocate provided input into proposed legislation, legislative amendments and calls for submissions on policy issues and development:

- Legislation
 - *Office for the Ageing (Adult Safeguarding) Bill 2018*
 - *Disability Inclusion Bill 2017*
 - *Fines Enforcement and Debt Recovery Bill 2017*
- The National Disability Insurance Scheme (NDIS) Market Readiness Paper (NDIA)
- *Considering a model for mandatory assessment and/or treatment for those at extreme and immediate risk, based on the Victorian Severe Substance Dependency Treatment Act 2010* Consultation Paper (SA Health)
- Disability Housing Review (Renewal SA)
- Discussion Paper on Elder Abuse (Office for the Ageing)
- *Future reform – an integrated care at home program to support older Australians* (Commonwealth Department of Health)
- NDIA and South Australian Government Officials Critical Service Issue Response Teleconferences
- Position Paper on Adult Safeguarding Legislation (Office for the Ageing)
- South Australian Mental Health Strategic Plan 2017-2022 (SA Mental Health Commission)
- The Justice Project (The Law Council of Australia)
- The South Australian Disability Justice Plan.

INNOVATING

BEST PRACTICE PROJECTS

Supported Decision-Making Projects

What is supported decision-making?

Supported Decision Making is a process to of enabling a person who requires decision making support to make, and/or communicate decisions about their own life. The decision making is supported and enables the person making the decision to exercise their rights and to make decisions and choices about their lives and how they live.

The *United Nations Convention on the Rights of Persons with Disabilities* expects that people should make their own decisions wherever possible, and that if they need help, they should get the support needed to make decisions – rather than appointing another person to make decisions for them. The Australian Law Reform Commission (2014) states that legal reform and increased clarity in the area of supported decision making are necessary and have developed a set of National Decision Making Principles which provide a framework for reviews of state, territory and Commonwealth legislation.

Research on this topic is motivated by national and international legal reforms that are driving a paradigm shift within guardianship practices to promote legal autonomy.

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

Key outcomes

The key outcomes sought from this project are to determine:

- when decisions have been self-determined, collaborative or substituted
- what conditions support the exercise of supported decision making principles
- what conditions create barriers to exercising supported decision making principles
- participants' perception of the process.

Project milestones achieved since project commencement are a literature review on supported decision-making, Human Research Ethic Committee approval, project documents and the engagement of participants. The project also includes a collaboration between the OPA and the NSW Public Guardians Office for the delivery of a training in supported decision making principles. The project, which is expected to be completed in late 2018, will inform a review of the OPA's supported decision making policy and practice documents.

In 2016, the OPA completed a **Law Foundation Grant** project aimed at identifying opportunities, barriers and best practice for implementing supported decision-making in guardianship practice in South Australia. It made recommendations for legislative and practice reform to enable supported decision-making for adults with mental incapacity living in South Australia. The Supported Decision-Making Project was titled '*Implementing Supported Decision Making for Adults under Guardianship in South Australia*'.

The project recommended:

1. Assessing the method of documenting decisions on the OPA data base to improve the way in which decisions are recorded.
2. Discussing the possibility of changing the language and terminology in the *Guardianship and Administration Act* to reflect the changing decision making paradigm and the international and national developments in law reform.
3. Providing ongoing training for all guardians about the changing culture, language and the lack of conceptual clarity around supported and substitute decision making including the necessary documentation.
4. Providing education programs for service providers and health professionals who interact with adults under guardianship so they also understand this changing decision making culture.
5. Guardians should be involved in ensuring clients' wishes for their end of life are documented where possible and that a 7-Step Pathway Resuscitation Plan is completed.
6. Further research and policy development is needed on the changing decision making paradigm.
7. The role of OPA would be strengthened if a dedicated policy role existed to focus on research, policy and education, and to implement these recommendations.

In 2017, the OPA was successful in obtaining a second **Law Foundation Grant** to further the outcomes of the first project and includes:

- Exploring ways to record decisions made by the OPA.
- Using focus groups to explore supported decision making practice.
- Reviewing definitions of capacity used in the *Guardianship & Administration Act 1993* and the *Advance Care Directives Act 2013* and making comparisons with interstate and international legislation
- Exploring the Section 5 Principles of the *Guardianship & Administration Act 1993* and identifying what specific law reform could occur to include supported decision making principles.

Additionally, the project aims to produce a policy and practice framework to implement supported decision making principles in the OPA guardianship services and examine areas of law reform.

The Private Guardian's Project

In October 2017, the OPA developed resources to support private guardians appointed by the South Australian Civil and Administrative Tribunal (SACAT) to fulfil their role. The Private Guardian's Manual is a comprehensive resource available in both plain language and easy read format. The Manual includes:

- guiding principles for guardians
- roles and duties for guardians
- legal responsibilities of a guardian
- scope of decision-making
- granting Special powers and
- review of guardianship orders

In addition, the OPA produced easy read information sheets on guardianship, informal arrangements and consent to medical and dental treatment. The easy read format increases accessibility for people with cognitive impairments, and people who are subject to a Guardianship Order.

The project was funded by the Government of South Australia and launched by the Minister for Disabilities in November 2017. The [Private Guardian resources](#) are available on the OPA website and a hardcopy version is available upon request. Promotion of the new resources occurred in the first half of 2018 including a targeted mail out to all state parliamentarians in April 2018. Promotion of the resources is ongoing.

Goals of Care initiative

In 2017, the OPA completed a Goals of Care pilot initiative that enabled people with impaired decision-making to document their future wishes. The project was led by the OPA and Margaret Brown, Adjunct Research Fellow, Hawke Institute, University of South Australia. The final draft report was completed in early 2018.

Currently, there is not an agreed document, such as an Advance Care Directive, available for people with impaired decision-making to record their future wishes. A document, titled the Goals of Care Plan was developed to address this need. Although it's not currently in a legal form it can be used to record what a person wishes for their future.

The pilot study provided considerable insight into the importance of a document like the Goals of Care Plan to document clients' wishes and values when they do not have capacity to complete a legal tool like an advance care directive.

The four themes to emerge from this research indicate that integrating the Goals of Care Plan into the ongoing goals of clients with impaired decision making would

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

Introducing a document like the Goals of Care Plan into practice will be an ongoing objective for the OPA.

BUSINESS IMPROVEMENT PROJECTS

Organisational Reporting

In 2017-18, the OPA implemented database changes to improve the collection of client data and enhance organisational reporting. The purpose of this ongoing project is to identify client needs; areas of unmet need and trends in guardianship and dispute resolution. Improved data collection and reporting assists the Public Advocate to undertake systemic advocacy with Ministers and other bodies such as the NDIA.

The OPA started collecting data on client housing type with a particular focus on clients residing in:

- Inpatient rehabilitation services
- Supported residential facilities
- Hospitals
- Prisons and Forensic accommodation

The housing data is informing a project on the accommodation needs of guardianship clients and gaps in housing provision due at the end of 2018.

The OPA has proceeded to collect information on client notifications of serious issues to the Public Advocate. The notification data is reported weekly and quarterly in the leadership forum. The OPA has also designed and implemented database changes to track the transition and participation of guardianship clients in the NDIS scheme. The data collected will enable the OPA to monitor the impact of the NDIS on both clients and the agency, and any subsequent growth in guardianship appointments.

Technology to support mobile service provision

In 2017-18, the OPA purchased mobile HP tablets to enable a more flexible, efficient and productive office and the capacity to work effectively off-site. Initial training and support was provided by AGD ICT services and in house training has occurred throughout the year to support the uptake. Mobile tablets can be used by OPA staff at SACAT hearings, enabling staff to access files and record outcomes of meetings and hearings at the point of service. The tablets reduce the need for paper files. Mobile tablets are also utilised at client visits and meetings with service providers across the SA. Lastly, the devices are used by the OPA's after-hours service providing timely access to client information during an after-hours call. Access to the client database and other agency files at off-site meetings support decision-making by OPA staff.

LEGISLATION

APPENDIX 1

The general functions of the Public Advocate are set out in s21 (1) of the GAA:

- 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 the 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 South Australian Civil and Administrative Tribunal (**SACAT**) considers that no other order would be appropriate.

Other applicable legislation

- *Advance Care Directives Act 2013 and Regulations*
- *Consent to Medical Treatment and Palliative Care Act 1995 and Regulations*
- *Criminal Law Consolidation Act 1935*
- *Mental Health Act 2009*
- *Powers of Attorney and Agency Act 1984*
- *Problem Gambling Family Protection Orders Act 2004*

GLOSSARY OF TERMS

APPENDIX 2

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| AGAC | Australian Guardianship and Administration Council |
| ALRC | Australian Law Reform Commission |
| APEA | Alliance for the Prevention of Elder Abuse |
| DOH | Department of Health (Australian Government) |
| DHS | Department of Human Services |
| DRS | Dispute Resolution Service |
| MAC | My Aged Care |
| NDIS | National Disability Insurance Scheme |
| OPA | Office of the Public Advocate |
| SACAT | South Australian Civil and Administrative Tribunal |
| SRF | Supported Residential Facility |

