

Office of the Public Advocate



Annual Report 2019–2020

Level 5, 211 Victoria Square Adelaide, SA, 5000
Tel: (08) 8342 8200
Email: opa@agd.sa.gov.au
Website: www.opa.sa.gov.au



To:

The Hon. Vickie Chapman MP

Attorney-General

Deputy Premier

This annual report is presented to the Hon. Ms Vickie Chapman MP, to be presented to the Parliament of South Australia to meet the statutory reporting requirements of the *Guardianship and Administration Act 1993* and to meet the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

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

It is with great pleasure that I present this report, which provides an account of the work of the Office of the Public Advocate (OPA) during 2019–20. There were many highlights and achievements for the OPA during the year, including the continued successful transition of most of OPA's eligible clients to become participants in the National Disability Insurance Scheme (NDIS). The work of the Disability Advocate, Dr David Caudrey, has been of significant value to South Australians who are engaging with the NDIS, particularly in terms of advocating for improved participant experiences, quality and safeguarding, and restrictive practices regulated by the NDIS Quality and Safeguards Commission.

The COVID-19 pandemic has required the office to work differently and the OPA team has adapted quickly and effectively to the challenges during this unusual time.

I thank the OPA staff for their ongoing commitment and support during the year in working with South Australians who require assistance with decision making, adult guardianship, dispute resolution regarding Advance Care Directives and consent to medical treatment, and general information and education to the SA community.

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

Anne Gale

Public Advocate

A handwritten signature in black ink, appearing to read 'AGale', written in a cursive style.

29 September 2020

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Introduction

Public Advocate's Message

The past year has seen a continued focus on the National Disability Insurance Scheme (NDIS). The Office of the Public Advocate (OPA) has seen most of its eligible client population successfully transitioned to the NDIS. As that transition reaches completion, the OPA's focus has shifted to navigating issues that the NDIS presents for our clients, including the use and authorisation of restrictive practices.



The COVID-19 pandemic of 2020 has, of course, been a very significant issue for the OPA's work. In March 2020, we successfully implemented our business continuity plan which enabled the OPA to continue to safely deliver essential guardianship, information and dispute resolution services. Key changes were to move to staff working largely from home, adopting a paperless working strategy, and establishing 'virtual' client visits by telephone or audio-visual links. In addition to ensuring business continuity, COVID-19 has presented unique challenges for people under the Public Advocate's guardianship, including ensuring that social distancing practices were observed while maintaining relationships and elements of choice and control.

On 9 April 2020, the *COVID-19 Emergency Response Act 2020* was assented to by the South Australian Parliament. This legislation included provisions to protect the human rights of people in supported residential accommodation whilst complying with the State Coordinator's directions about social distancing. This part of the legislation ensured that people with a mental incapacity who were unable to comply with directions about COVID-19 and social distancing could only be detained if this was necessary and if it was the least restrictive alternative. Strict time limits applied before a matter would need to be brought to the South Australian Civil and Administrative Tribunal (SACAT) for a hearing and determination.

The issue of joined up systems to safeguard vulnerable adults has been a priority for the OPA in 2019–20. This included contributing to the very important work of the Safeguarding Task Force, which was established following the sad death of Ms Ann Marie Smith in April 2020. The Task Force was co-chaired by Dr David Caudrey, the Disability Advocate for South Australia, with Kelly Vincent, Disability Rights Advocate, and is expected to deliver its final report in July 2020.

Continuing on from the trend in 2018–19, there was an increase (30.6 per cent) in the number of guardianship appointments during 2019–20 and a decrease (7.4 per cent) in the number of guardianship matters that were closed. This is attributable to a number of factors, including the role of the guardian in the area of restrictive practices and in overseeing decisions about, and the delivery of, NDIS services to our clients.

In May 2020 the OPA co-located with the Public Trustee to premises at 211 Victoria Square, but the two entities did not merge to become one entity. The OPA and the Public Trustee will, however, use our co-location as an opportunity to improve the experience for our mutual clients.

Some key activities and changes for the OPA in 2019–20 were as follows:

- provided Guardianship Services to over 1538 South Australians throughout the year
- the OPA delivered a number of education sessions about the authorisation of restrictive practices in South Australia as well as the importance of service provider agencies working with the OPA on reporting of critical incidents relating to clients under guardianship
- in May 2020, the OPA moved from premises at 95 Grenfell Street in Adelaide’s city centre in order to co-locate with the Public Trustee at 211 Victoria Square
- the Disability Advocate took on the roles of chairing task forces on disability safeguarding, and restrictive practices in South Australia
- the OPA successfully implemented its business continuity plan in response to the COVID-19 pandemic. This saw the majority of staff move from office-based working to working from home and
- the OPA delegated some functions of the Public Advocate to the Community Visitors Scheme, enabling community visitors to visit people under the Public Advocate’s guardianship who are also NDIS participants.

The OPA continued its research and policy work on supported decision making for people with impaired decision making capacity. The OPA chaired a stakeholders’ forum throughout 2019–20 and also partnered with the South Australian Health and Medical Research Institute to submit an application to the National Disability Insurance Agency (NDIA) for an Information, Linkages and Capacity Building grant. The grant application was successful and will be used to undertake a project to enhance supported decision making for OPA NDIS participants with an emphasis on people with psychosocial disability.

Highlights and Achievements

The OPA's provision of services to the South Australian community has increased this year. Across 2019–20, the OPA has:

- assisted **1538** guardianship clients
- worked with **482** new guardianship clients
- closed **247** guardianship files
- received **53** new dispute resolution applications and
- responded to **2505** enquiries to our information service.

These figures reflect increased activity with individuals, family members, community members and organisations in the past year, especially in respect of the OPA's decision making functions as guardian. More information on each area of our work, including comparisons with 2018–19, can be seen throughout the report.

Areas of Reform

Reform in Disability

The full transition to the National Disability Insurance Scheme (NDIS) in South Australia has continued to be the dominant area of reform in the disability sector. The OPA has continued working constructively with the South Australian Department of Human Services (DHS) and the Department for Health and Wellbeing (DHW), as well with non-government service providers to undertake NDIS eligibility determination and participant planning. This seeks to ensure that the OPA's clients (as participants) are able to access the scheme and get the best possible plan for their future.

The regulator of registered NDIS service providers, the NDIS Quality and Safeguards Commission (the NDIS Commission), marked one year of operation in South Australia on 1 July 2019. The OPA actively engaged with the NDIS Commission during 2019–20, in relation to behaviour support and restrictive practices in particular. The OPA partnered with the NDIS Commission to deliver a number of education sessions to NDIS providers, in metropolitan and regional areas, about authorisation of restrictive practices in South Australia.

The changes and challenges presented by the implementation of the NDIS has had a direct impact on the number of orders made by the SACAT appointing the Public Advocate as the guardian for persons with disability.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) was established in April 2019. The Disability Royal Commission held a number of hearings and community engagement sessions throughout 2019–20 and delivered its first progress report in December 2019. It is due to

deliver its final report by April 2022. The Disability Royal Commission has published a number of issues papers for consultation, including a paper on access to health care for people with a cognitive impairment and another on restrictive practices. These are particular areas of interest for the OPA's strategic advocacy functions.

Reform in Aged Care

The Royal Commission into Aged Care Quality and Safety (the Aged Care Royal Commission) is charged with inquiring into the quality and safety of aged care services and how best to provide high quality services to Australians. The Aged Care Royal Commission commenced hearing evidence in February 2019 and published its interim report, which was in three volumes, on 31 October 2019. In that report three areas for urgent action were identified:

- more home care packages to reduce the waiting period for aged care at home
- a response to the over reliance on chemical restraint in aged care and
- addressing the number of younger people with disability going into, and staying in, aged care facilities.

The Aged Care Royal Commission is due to deliver its final report by 26 February 2021.

Elder Abuse and Adult Safeguarding

The issue of safeguarding adults has been a matter of high profile during 2019–20.

Over the past several years, there has been significant focus on elder abuse. The Adult Safeguarding Unit (ASU) within the DHW began operating on 1 October 2019 with powers to investigate allegations of abuse or neglect of persons aged 65 and over, and over 50 years of age for Aboriginal and Torres Strait Islander people. The ASU is due to extend its scope of operation to vulnerable adults aged 18–64 in February 2022. At the national level, the Australian Government published its National Plan to Combat the Abuse of Older Australians 2019–2023.

More recently, the issue of safeguarding people with disability has been significantly highlighted, particularly following the sad death of Ms Ann Marie Smith, who was an NDIS participant. Ms Smith's death highlighted gaps in preventative measures for safeguarding vulnerable adults with disabilities as well as clear pathways for the referral and investigation of concerns.

On 21 May 2020, the Minister for Human Services established the Safeguarding Task Force (Task Force), to report on gaps and areas for strengthening safeguarding arrangements for people with disability in South Australia. The Disability Advocate, Dr David Caudrey, co-chairs the Task Force with Ms Kelly Vincent, Disability Rights Advocate. The Public Advocate is a member of the Task Force.

The Task Force published its interim report in June 2020, which identified twelve safeguarding gaps and made five recommendations. Included is a recommendation that the State government extend the scope of the ASU to include all vulnerable adults earlier than 2022. Nine of the twelve gaps relate to issues about the NDIS and the regulation of NDIS service providers.

The Task Force published its final report on 31 July 2020 which identified fourteen safeguarding gaps and made seven recommendations. The South Australian Government has accepted all recommendations of the Task Force.

Mental Health

Two areas in mental health that were dominant in 2019–20 continued to be of significant interest to the OPA: the recommendations for improvements to the mental health inpatient rehabilitation services located at Glenside campus and the transition of people with psychosocial disability to the NDIS.

The Public Advocate continued as a member of the Governance Steering Committee charged with overseeing the Central Adelaide Local Health Network response to the recommendations for improvement. The Public Advocate and the South Australian Disability Advocate are members of the NDIS Psychosocial Taskforce, which works to ensure planned transition of eligible mental health service users to participate in the NDIS.

South Australia is proving slower than all other jurisdictions in achieving access to the NDIS for people with a primary diagnosis of psychosocial disability. Inclusion of mental health/psychosocial disability within disability services is a new concept for services in South Australia and there is a slower than expected movement of people from community mental health services into the NDIS. The national average participant percentage for clients with a psychosocial disability accessing the NDIS is 10 per cent and South Australia currently has a figure of 6 per cent. There is also a conundrum in mental health services (with its emphasis on recovery) as the criteria for access to the NDIS include long-term need for support. It is important for eligible people under the Public Advocate's guardianship, including those with psychosocial disability, to have access to the NDIS in order to be able to benefit from the services on offer. The OPA has the default position that all guardianship clients under 65 years should be eligible for the NDIS. If they are deemed ineligible, we will look closely at the reasons why.

There has been a change in the process relating to the use of restrictive practices to administer electro-convulsive therapy (ECT) to mental health inpatients during 2019–20, following clarification of the law and new guidance from the Chief Psychiatrist. The need for a guardian to make an application for special orders from the SACAT to use restrictive practices of this kind in mental health inpatient settings has seen an increase in the Public Advocate being appointed in relation to administration of ECT.

Supported Decision Making

The OPA finished two research projects on the area of supported decision making in 2018–19. During 2019–20, the OPA continued to chair the Supported Decision Making Interest Group as a forum for relevant stakeholders to share ideas and experiences in implementing supported decision making. In 2019–20, the OPA partnered with the South Australian Health and Medical Research Institute and successfully applied for an NDIA Information, Linkages and Capacity Building grant to do some further research and implementation of supported decision making for OPA clients who are NDIS participants.

Australian Guardianship and Administration Council (AGAC)

The Public Advocate is a member of the Australian Guardianship and Administration Council (AGAC). AGAC is an inter-jurisdictional group comprised of the Public Guardians, Public Advocates, the heads of boards and tribunals (with jurisdiction to make guardianship and administration orders), and the State Trustees or Public Trustees. AGAC generally meets twice per year. This year, AGAC meetings have informed systemic advocacy, strategic policy development and publication of information on topics such as powers of attorney, restrictive practices and safeguarding adults.

The Office of the Public Advocate

2019-20 Snapshot Report

Guardianship Client Activity

1538 Clients Assisted

482 New Clients

247 Closed Cases

1291 Current Clients



Informing & Educating

23 Sessions

508 Attendees



Enquiries

The OPA received 2505 enquiries

Key themes:

546 Guardianship Queries

416 Financial Administrative Queries

402 Advance Care Directive Queries



Dispute Resolution

59 Clients Assisted

57 Closed Cases



Functions of 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 OPA provides advocacy, guardianship, information, investigation, education and dispute resolution services to fulfil the 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 systemic and individual advocacy.

To provide information and advice to the community related to mental health, guardianship and administration, Advance Care Directives, legislation and related issues.

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

To provide effective dispute resolution in relation to disagreements around Advance Care Directives and consent to treatment decisions.

Key Services

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

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

Decision Making

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

Investigating

The SACAT can direct the Public Advocate to investigate the affairs of a person who is the subject of an application for guardianship or administration order or who has had an advance care directive revoked by the SACAT. The OPA provides a report to assist the SACAT to make a decision.

Resolving and Mediating

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

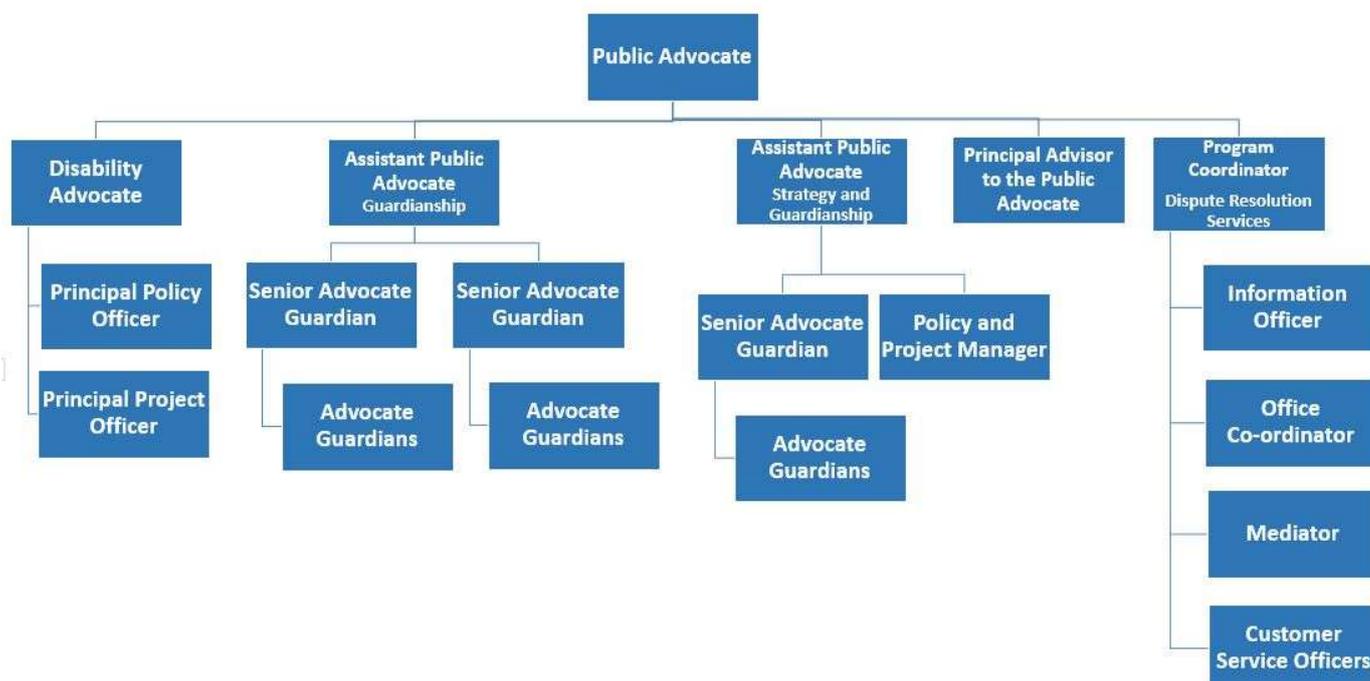
Informing and Educating

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

Advocating and Promoting Rights

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

Organisational Chart



Decision Making and Investigations

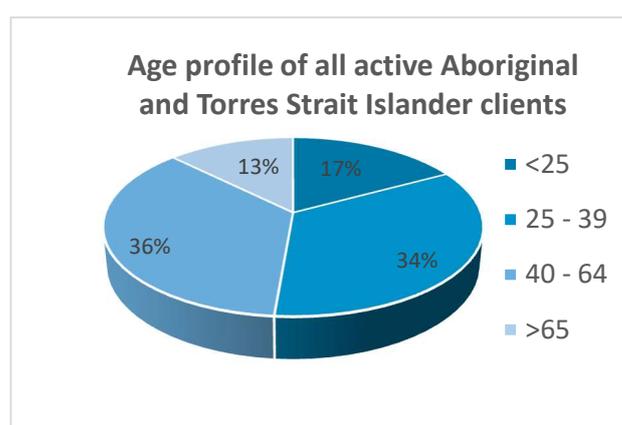
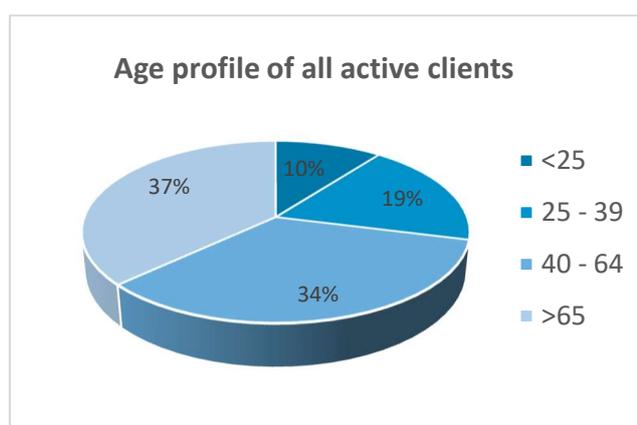
Profile of Clients under Guardianship

At 30 June 2020, there were **1291** clients under guardianship.

Aboriginal and Torres Strait Islander clients under guardianship accounted for 8.6 per cent of all clients at 30 June 2020 which is 1.6 per cent higher than the previous year. Aboriginal and Torres Strait Islander people under guardianship are over represented compared to their proportion of the South Australian population (2 per cent).

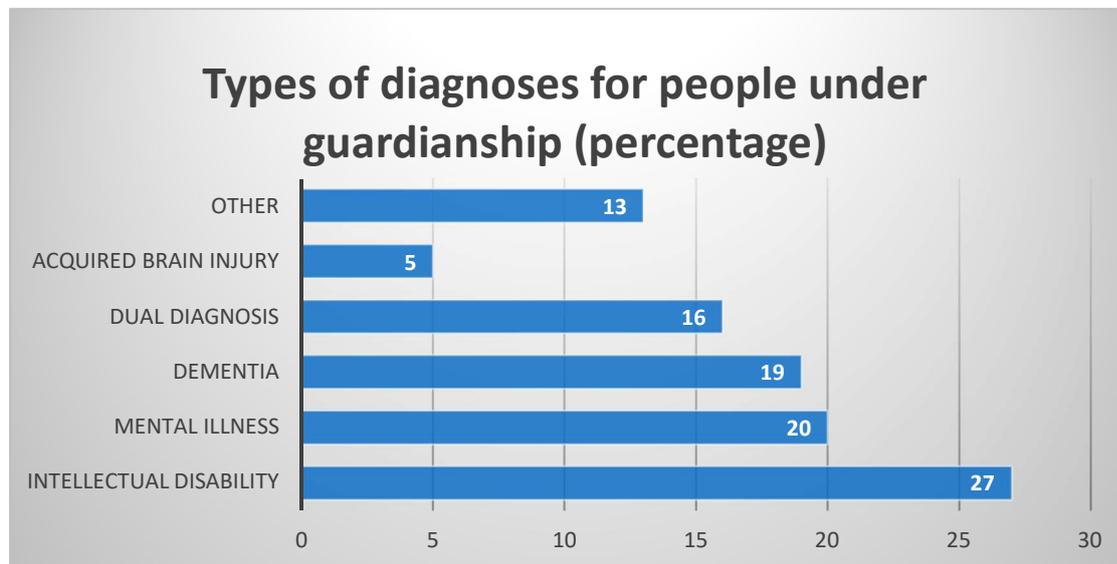
In 2019–20, 50 per cent of guardianship clients were male and 40 per cent were female. For 10 per cent of clients no gender was specified. For Aboriginal and Torres Strait Islander clients there was a higher proportion of male clients (64 per cent).

The age profile of guardianship clients indicates that approximately a third (34 per cent) of all clients are in the middle age group of 40 to 64 years and slightly more than a third (37 per cent) are over the age of 65 years. The age profile of Aboriginal and Torres Strait Islander clients shows a higher representation of younger clients aged between 25 and 39 years (34 per cent). There was a much lower representation of Aboriginal and Torres Strait Islander clients in the older age groups, particularly over 65 years, reflecting the lower life expectancy of Aboriginal and Torres Strait Islander people.

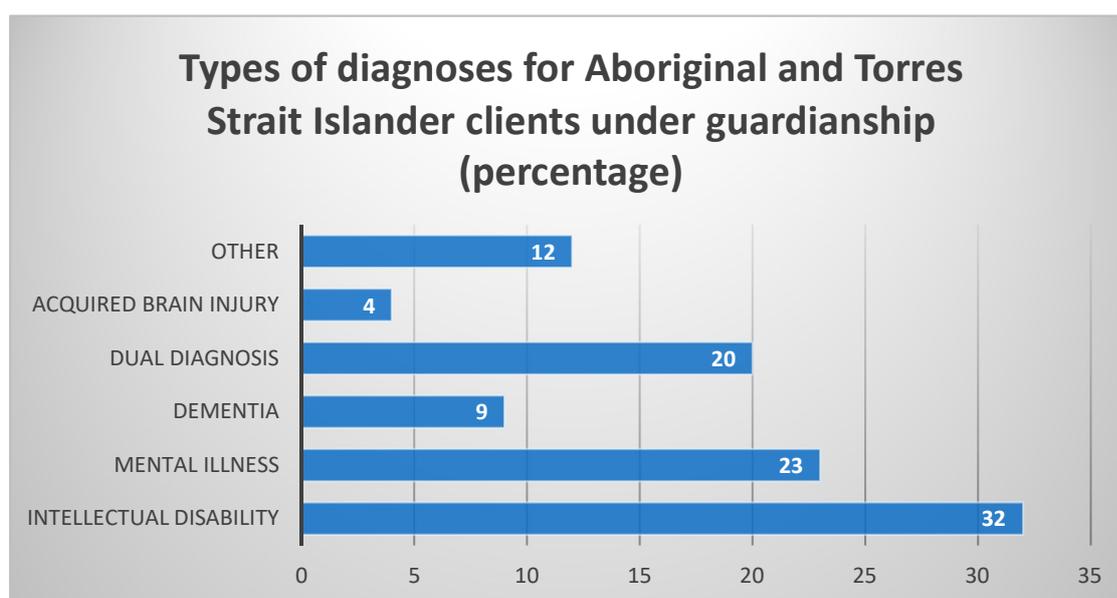


Client Diagnostic Profile

In 2019–20, people under guardianship with impaired decision making capacity had conditions in the following areas: intellectual disability (27 per cent), mental illness (20 per cent), dementia (19 per cent), dual diagnosis (16 per cent), acquired brain injury (5 per cent) and other (13 per cent).



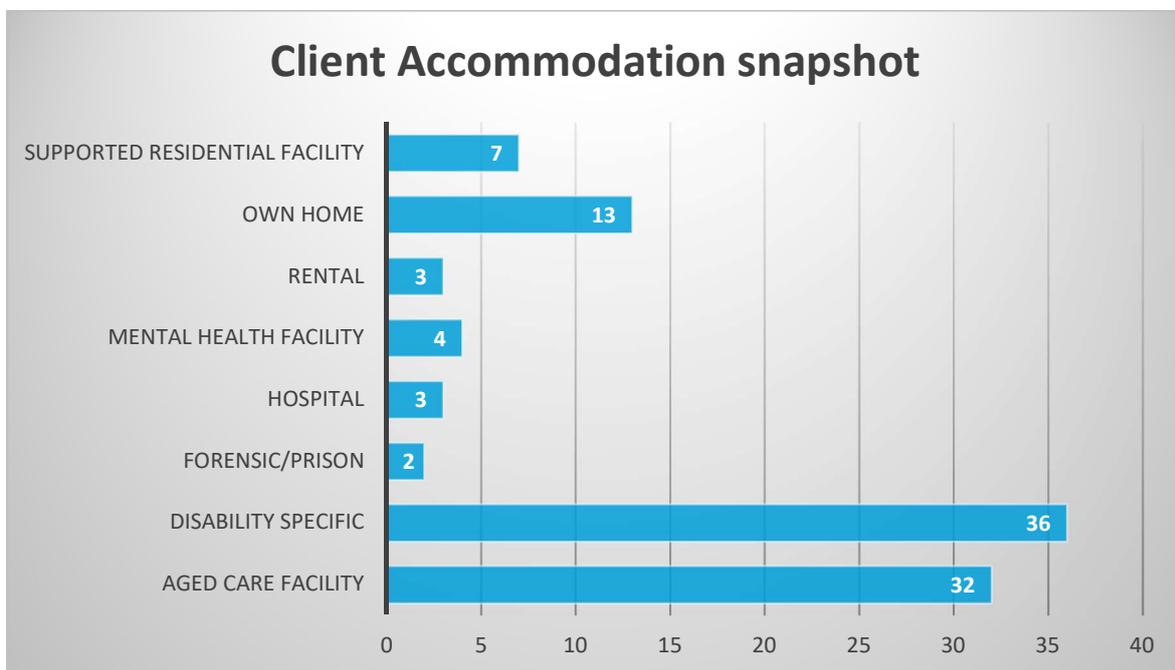
This is similar for Aboriginal and Torres Strait Islander clients, although intellectual disability, mental illness and dual diagnosis are slightly more prevalent for Aboriginal and Torres Strait Islander people under guardianship: intellectual disability (32 per cent), mental illness (23 per cent), dementia (9 per cent), dual diagnosis (20 per cent), acquired brain injury (4 per cent) and other (12 per cent).



Accommodation

Clients under guardianship reside in either:

- disability specific accommodation (36 per cent)
- aged care facilities (32 per cent)
- public, private and community rental accommodation (3 per cent)
- their own home (13 per cent)
- supported residential facilities (7 per cent) and
- a small group of clients are accommodated either at a forensic service or prison (2 per cent), in hospital (3 per cent) or a mental health facility (4 per cent).



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

http://www.opa.sa.gov.au/resources/information_sheets (Information Sheet No 4).

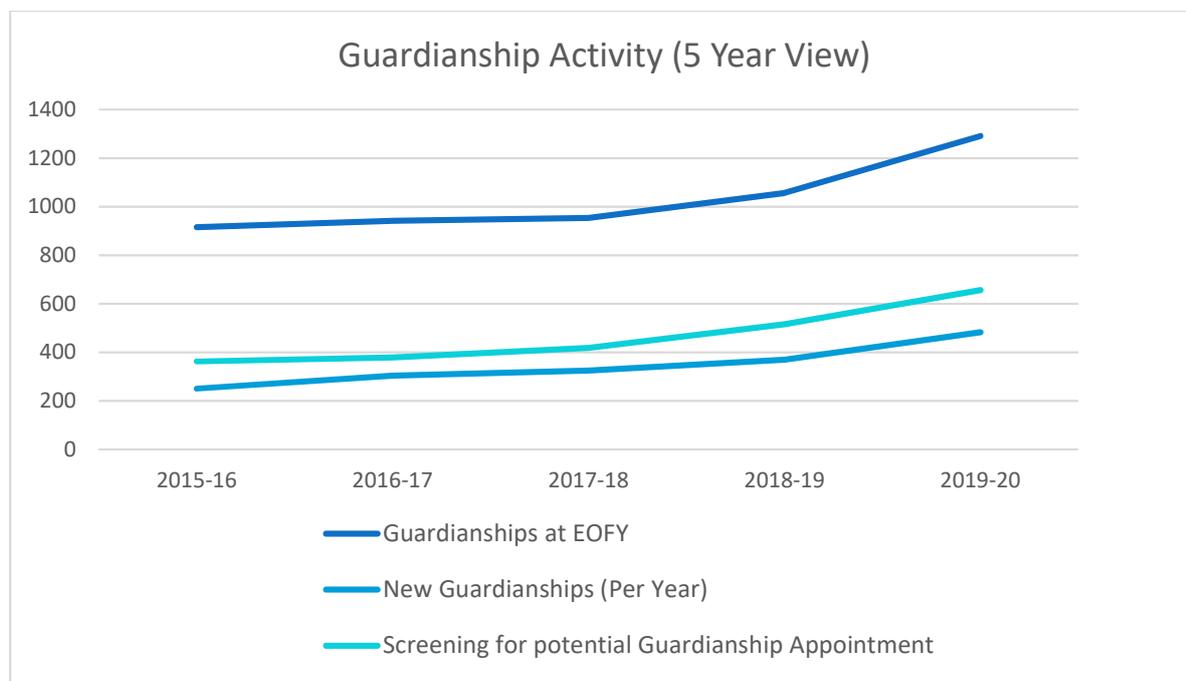
Five year data can be found at:

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

Guardianship Activity in 2019–20

Active Matters

The OPA has experienced a continued increase in guardianship activity over the past 5 years. Clients screened for potential guardianship appointment, new guardianship clients and the number of clients at the end of the financial years continues to grow.



At 30 June 2020 the OPA had 1291 active guardianship matters, which was 235 more active matters than the previous year. There was also an increase in total guardianship matters in 2019–20. Over the past five years, an average of 1,333 South Australians have received guardianship services each year from the OPA, with 1538 receiving services in 2019–20.

Table 1: Active guardianship matters 2019–20

Guardianship	2018–19	2019–20	% ↑/↓
Active matters for the whole year	1323	1538	16.25 ↑
Active matters at 30 June	1056	1291	22.25 ↑

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 2019–20 there were 656 applications for potential guardianship and the OPA was appointed as guardian for 482 South Australians with impaired decision making capacity (74 per cent).

There was a significant increase in both guardianship applications and new guardianship appointments in 2019–20, as shown in Table 2.

The increase in guardianship appointments is a result of both the roll out of the NDIS (guardians are now appointed to make decisions about NDIS services) and the increased awareness of the need for consent to or authorisation of restrictive practices.

Table 2: New guardianship matters 2019–20

Guardianship	2018–19	2019–20	% ↑/↓
SACAT hearings for guardianship applications	515	656	27.4 ↑
New guardianship matters	369	482	30.6 ↑
Closed guardianship matters	267	247	7.4 ↓

Closed Matters

In 2019–20, 247 guardianship matters were closed, which represents 16.1 per cent of all guardianship matters for the year. There has been a decrease in the numbers of guardianship matters closed (7.4 per cent). Closure of guardianship matters has decreased because there is now a greater need for ongoing guardianship appointments:

- in order to make decisions about, and undertake reviews of, NDIS services and
- due to an increase in people needing to be subject to SACAT issued detention orders as a result of a decision of the Full Court of the Supreme Court of South Australia handed down in May 2019 (*The Public Advocate v C, B* [2019] SASCFC 58).

The OPA will seek to revoke a guardianship order where it is believed that there is no longer a role for the Public Advocate as guardian. There is now a reduced capacity to seek the revocation of guardianship orders when the Public Advocate is appointed to make decisions about NDIS services because NDIS plans and services are regularly reviewed and changed. This is now an ongoing role for a guardian. Similarly, when the Public Advocate is appointed because restrictive practices are used, there are regular reviews. While the use of restrictive practices can sometimes be eliminated or reduced over time, the need for detention orders for people who are living in ‘closed’ facilities or accommodation will usually remain. This results in an ongoing appointment of a guardian and an inability to close guardianship files.

On 1 July 2017 South Australian adults aged 18 to 64 became eligible to access the NDIS, and the trend demonstrates guardianship closure progressively slowing due to guardians providing longer-term support to clients under the NDIS. Closures have also decreased due to the need for detention orders following the Full Court of the Supreme Court’s decision in May 2019.

Number of guardianship matters closed (3 year data)



Of the 247 guardianship matters that were closed in 2019–20, 58 matters (23.5 per cent) were in place for over three years. Guardianship matters were closed because the orders were revoked (39 per cent), or after the death of the client (43 per cent) or the appointment of a private guardian (18 per cent).

Table 3: Length of guardianship matters 2019–20

Length of guardianship matter	Number of closed matters
6 – < 12 months	123
1 year – < 2 years	38
2 – < 3 years	28
3+ years	58
Total	247

Decisions

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

In 2019–20 the breakdown of decisions made for clients under guardianship was

- accommodation (25 per cent)
- health care (22 per cent) and
- lifestyle (53 per cent).

There was an increase in lifestyle decisions in 2019–20, which could reflect the decisions required to assist OPA clients to successfully transition to the NDIS and to receive NDIS supports. The SACAT has made more specific orders, which may once have been described as ‘lifestyle’ decisions, stating whether the order grants powers to make decisions about support services or access to others, for example. The SACAT has also made orders specifically in relation to decisions relating to some restrictive practices. The OPA is amending its reporting on decisions accordingly. The OPA may, therefore, change reporting categories for future annual reports.

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

Special powers include:

1. a direction for a person to reside in a particular place or with a particular person
2. authorisation for a person to be detained at the place they have been directed to stay and
3. authority for a person to receive proper medical treatment and care.

Urgent Decision Making

The OPA provides an after-hours telephone service on weekdays, and 24 hours on weekends and public holidays. The service provides for urgent decisions for clients and service providers, including matters that may require an application to the SACAT for urgent orders. The majority of calls to this service are from health practitioners seeking urgent orders or consent for medical treatment for people under the guardianship of the Public Advocate.

In 2019–20, the OPA responded to 1083 after- hours calls, an increase of 135 calls (14.24 per cent) from the previous year, with a monthly average of 90 calls. The two peak periods are generally 12:00 pm to 6:00 pm (weekends and public holidays), and 6:00 pm to 9:00 pm on weekdays.

Investigations

The Public Advocate can be directed by the SACAT to conduct an investigation and provide a written report relevant to an application received by the 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. The OPA has experienced an increase in the number of investigations that it has been directed to undertake in 2019-20.

The 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 investigates include the appropriateness of sterilisation, accommodation matters, access issues, health issues, financial matters and the appropriateness of individuals to act as private guardians.

Table 4: Investigations for the SACAT in 2019–20

Complaints/information requests	2018–19	2019–20	% ↑/↓
OPA investigations undertaken for the SACAT	35	38	8.6 ↑
OPA investigations finalised for the SACAT	31	44	41.9 ↑

Litigation Guardianship

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

When appointed by a 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 two new litigation files during 2019–20.

Table 5: Litigation guardianship 2019–20

Litigation Guardianship	2018–19	2019–20
Appointments	4	2

Complaints and Decision Reviews

Complaints may relate to decisions made by the OPA staff, communication concerns or other matters. In 2019–20, the OPA responded to 12 complaints/decision reviews, 32 ministerial enquiries and 5 Freedom of Information requests. Although the number of ministerial requests has increased since the previous year, we have found that, at times, multiple entities may lodge a request on the same subject matter. From the 1538 clients assisted in 2019–20, ministerial requests were made for 2 per cent of clients.

Table 6: Information requested 2019–20

Complaints/information requests	2018–19	2019–20
Complaints and decision reviews	19	12
Ministerial enquiries	22	32
Freedom of Information requests	8	5

Warrants

A warrant is a written authority to apprehend a person under section 69 of the *Guardianship and Administration Act 1993* to take them to a psychiatrist, psychologist or medical practitioner nominated by the SACAT for examination and assessment. There were no applications for a warrant made in 2019–20.

Decision Making Pursuant to the COVID-19 Emergency Response Act 2020

From early April 2020 the OPA had increased contact from service providers seeking information and guidance about the implications of COVID-19 on the provision of services to people with a mental incapacity, including people under the guardianship of the Public Advocate.

It was apparent that some protected persons may not have the capacity to understand or comply with public health guidance and directions issued by the State Coordinator in relation to the COVID-19 pandemic. However, it was important that people were not prevented from freedom of movement without appropriate oversight or orders if required. Where supported accommodation providers, including: aged care; mental health and disability service providers, needed to be able to limit the movement of some protected people to ensure they were not exposed to COVID-19 or spread the virus in the broader community it was essential that this be done lawfully. It was imperative that people were protected from unlawful detention and that their human rights were upheld by ensuring that appropriate checks, balances and safeguards were in place in the circumstances.

COVID-19 Detention Orders

On 9 April 2020, the *COVID-19 Emergency Response Act 2020* came into effect. Schedule 1 of the Act contains a scheme for authorisation of the detention of persons with a mental incapacity to ensure:

- compliance with guidelines of the Chief Public Health Officer and directions of the State Coordinator; and
- that the rights of such persons were protected by ensuring that detention was the least restrictive alternative and subject to independent oversight and review.

The scheme was an important initiative that was responsive in approach to the evolving COVID-19 situation and challenges by ensuring that protected persons (and the community) were kept safe, their rights protected and that they were protected from unlawful detention. The legislation enables accommodation service providers to lawfully and urgently detain persons who are at risk of exposure to COVID-19 and/or non-compliant with public health guidance, for a short period, with a level of independent oversight by a guardian or the Authorising Officer. The approved detention will generally be at the protected person's usual home.

The scheme empowers a person's guardian to authorise detention for a period not exceeding 28 days. If there is no guardian appointed, an Authorising Officer or the SACAT may approve the detention.

Any approval will seek to implement the least restrictive approach that balances the protected person's freedom with both the person's and the broader community's right to be protected from the possible spread of COVID-19. The Authorising Officer and Public

Advocate have determined and published that any application made to them requesting authorisation of detention of a protected person must be accompanied by information about positive behaviour support strategies to assist the protected person so that they can be assured that the protected person's daily routine is maintained as much as possible. These might include, for example, how any exercise that might be prevented by the detention is replaced; how any personal development, such as might be provided in a day options program, is replaced; any changes to diet to reflect the changed circumstances of the person; and any relationship issues with other residents. The detention must also comply with guidelines published by the Attorney-General.

Implementation of the Scheme

The OPA worked with an across-agency group within the Attorney-General's Department to implement the scheme. Associate Professor Richard Bruggemann was appointed as the Authorising Officer and worked with the OPA to develop communication and educational materials for accommodation service providers. Guidelines and regulations under Schedule 1 were published and detailed information about the scheme has been published on the sa.gov.au website and the OPA website. Information was also distributed to stakeholders via the Department of Human Services and SA Health.

Decisions to Approve Detention under Schedule 1

The Public Advocate has approved the detention of two protected persons under guardianship for the period from 9 April to 30 June 2020.

In the first case, the Public Advocate approved the detention of a resident of an aged care facility. In the second case, the Public Advocate approved the detention of a resident of a supported residential facility.

In both cases, the protected person did not have the capacity to understand social distancing requirements. Both persons were leaving their residence against advice and engaging in behaviour that put them and other residents, staff and the community at risk of exposure to COVID-19.

At the request of the respective service providers, the Public Advocate was able to act quickly to approve the detention of the protected person at their residence for a period of 28 days.

Following the initial 28 day order, an application was made to the SACAT, and special powers to detain one of the protected persons was granted. The other person was later hospitalised for medical treatment and the detention order expired and was no longer required due to change in circumstances.

Community Visitor Scheme

To ensure additional external oversight of the temporary detention scheme, the Community Visitor Scheme (CVS) was expanded so that appointed Community Visitors could visit protected persons who were detained under the new temporary COVID-19 detention order. The OPA informed the CVS when a person was detained under the scheme, and requested that the person be visited to check on their welfare.

The scheme also provided for the CVS to visit people under these special detention orders using video conferencing or other electronic means to check on their welfare and to ensure that the accommodation service provider was adopting least restrictive practices and keeping a register of orders.

The CVS conducted one visit to a person in an aged care facility who was subject to a temporary detention order. Another person subject to a detention order was hospitalised and no longer under an order and as a result the CVS did not conduct a visit with that person.

Resolving and Mediating



Dispute Resolution Service (DRS)

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



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

1. 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 and
2. if a person does not have an Advance Care Directive and there is a disagreement about health care and/or medical treatment under the *Consent to Medical Treatment and Palliative Care Act 1995*. This includes disputes involving children under 16 years of age.

It is the intention of both Acts that applications for dispute resolution should be resolved by the DRS, and only proceed to the more formal SACAT process if resolution cannot be achieved. The aim is to resolve a dispute and avoid the need for the SACAT to make a guardianship order by preserving the current decision making arrangements.

If, during a dispute resolution process, the OPA becomes aware of abuse or harm to the person, or if the matter is not within the legislative authority of the DRS, the mediation process is halted and the matter is referred to the SACAT.

What is an Advance Care Directive?

An Advance Care Directive (ACD) 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.

An Enduring Power of Guardianship, a Medical Power of Attorney, or an Anticipatory Direction, made prior to 1 July 2014, continues to be valid and is treated as if it was made under the *Advance Care Directives Act 2013*.

Advance Care Directives Review 2019

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

The OPA and the DRS were encouraged by the findings of the review regarding our management of the complexities of this work, and acknowledging our contribution to the operation of the *Advance Care Directives Act* and the reduction of applications to the SACAT.

The review reported that, despite the OPA exercising a range of complex roles and functions under several Acts, it has managed the potential for conflicts with diligence and strict compliance with internal protocols and policies. Further reduction in resources or funding of the OPA would have a direct and adverse effect on the operation of the Act and, potentially, the caseload of the SACAT.

New Applications

Applications made to the DRS often involve conflict between family members in regard to a person with a significant level of cognitive impairment. In 2019–20 reasons for the applications included being prevented from visiting a loved one, disagreements about accommodation decisions, and general concerns about the decisions being made by substitute decision makers under an ACD.

There has been a decrease in the number of referrals to the DRS from the SACAT, as per Table 7 below. It is understood that this is mainly attributable to amendments made in 2019 to the *Advance Care Directives Act 2013*. In particular, section 51(1) now provides the SACAT with a broader power to revoke the appointment of a substitute decision maker without the need for an application by the Public Advocate under section 51(2). These matters may have once been referred to the DRS for consideration but can now be dealt with directly by the SACAT.

Table 7: DRS Applications 2019–20

	2018–19	2019–20
Matters brought forward from previous year	4	6
New Applications (direct)	60	50
New Applications (SACAT referral)	6	3
Total applications	70	59

*Data from 2018-19 has been updated subsequent to the previous annual report.

‘While SACAT may refer matters to OPA under s 49, the number has declined since the Act came into operation. Statistics provided by OPA showed that while 45 matters were referred in 2014–2015, only 5 matters were referred to OPA from SACAT in 2018–2019 (using figures up until the end of May 2019).’
(Report on the Review of the Advance Care Directives Act 2013 (SA), 2019, p. 73)

This trend continued in 2019–20, with only 3 matters being referred by the SACAT to the DRS during this period.

Finalised Matters

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

Table 8 indicates the outcome of all 57 matters finalised by the DRS during 2019–20. A total of 2 matters were still open at 30 June 2020.

Table 8: DRS finalised applications 2019–20

Finalised matters	2018–19	2019–20
Resolved	27	21
No Further Action	17	20
Referred to the SACAT	10	7
Withdrawn	11	8
Client Deceased	1	1
Total	64	57

*Data from 2018-19 has been updated subsequent to the previous annual report.

There were 20 matters where no further action could be taken, such as where parties were not willing to mediate, there was alleged abuse/neglect and/or where the matter was outside of the scope of the legislation.

When matters are mediated, the DRS continues to have a high rate of success. Out of the 6 formal mediations, assisting a total of 33 participants, four of these matters were resolved with a full mediated agreement. One reached partial agreement and an application was made to the SACAT to appoint a guardian to resolve the outstanding issues. The other was a consent issue, with no ACD in place, and an application for guardianship was deemed necessary.

During the year, we have noted a hesitance to enter into the process when the option of face to face mediation is not available, which has been the case during the COVID-19 pandemic.

Due to the recent COVID-19 environment, the DRS has been alert to any opportunity for resolution which falls under the category of 'preliminary assistance' under section 45(1). Even without the option of face to face mediation, we have been able to assist families by:

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

Out of the 57 total finalised matters, we were able to engage in preliminary assistance in 49 matters. In fact, this may be the most important aspect of the DRS. Matters which do not need to proceed to a tribunal hearing are 'triaged' and attended to by DRS giving information and education, clarifying points of disagreement, and assisting parties to access options other than a SACAT application. In addition, 13 matters were resolved by the parties reaching agreement, with only preliminary assistance and no formal mediation process.

As part of our dispute resolution toolkit, we have taken recent opportunities to provide conflict coaching to individual interested parties. This involves assisting them to work through their interpersonal conflict outside of a mediation setting. Participants are guided through a process which helps them gain:

- fresh understanding of their conflict
- new skills for navigating difficult conversations and operating out of their own personal values and
- options for moving towards a preferred future.

The COVID-19 situation in South Australia at the end of this financial year has presented the DRS with a number of operational challenges. The service has responded with a more flexible approach to our usual processes, as well as offering telephone consultations and mediations for our clients. We have been able to attend to 17 applications since March 2020, and have resolved 11 of these, using phone and email communication.

There are many matters which can be resolved by ensuring that parties are fully aware of their rights and obligations, identifying the issues in dispute, canvassing options that may obviate the need for further proceedings and, where appropriate, facilitating full and open communication between the parties. We have had a greater dependence on these aspects of preliminary assistance this year, and a total of 15 (26 per cent of the total finalised, or 71 per cent of resolved cases) of our cases have been resolved without attendance at any mediation.

Our experience over this period has highlighted to us the importance of a service which is focused on resolving underlying conflict, encouraging parties to act in ways that de-escalate conflict and, where possible, enhancing their communication. We take seriously the opportunities we have for modelling the language and behaviour of supported decision making, and promoting positive outcomes for our clients and the people who care about them.

Dispute Resolution Service: Case Study 1

The Dispute Resolution Service (DRS) received an application from Mr G's nephew, who raised concerns about whether Mr G's needs were being met. He explained that he did not communicate with his two siblings, who seemed to be making decisions for Mr G, but that he would like their communication to be better.

We contacted the siblings and confirmed that there was an Advance Care Directive, which appointed them as substitute decision makers. They explained that Mr G had been experiencing a decline in cognitive capacity, and they had recently decided to arrange permanent accommodation for him in the aged care facility which he had specifically requested. They also described a significant family conflict, which had led to their loss of contact for the last two years, since the passing of their father.

The substitute decision makers were given information about the *Advance Care Directives Act*, the section 10 principles which must guide their decision making, and the expectation that they would 'stand in Mr G's shoes'.

Conversations with the parties were also focused on asking questions that would help them understand each other's perspective.

Following our initial phone calls, the substitute decision makers initiated communication with the applicant and, when we followed up a few days later, Mr G's nephew had visited him and was reassured that he was eating well, his care needs were being met, and that the substitute decision-makers were making appropriate decisions, in consultation with Mr G's doctor. All parties reported that the communication was polite and respectful.

Mr G's nephew also went on to encourage other family members to interact this way, and a new pattern was set for Mr G to have ongoing contact with the important people in his life.

We acknowledged the effort made by all participants to show mutual respect in their communication, and the parties all confirmed that this would continue. Mr G was settling into his new accommodation, his overall wellness was improving, and Mr G's nephew decided that mediation would no longer be necessary.

Mr G was able to keep his ACD and his substitute decision makers, and have his wishes upheld.

Dispute Resolution Service: Case Study 2

The Dispute Resolution Service (DRS) values a collaborative approach to advance care planning and dispute resolution, and works to build relationships with the many related services in South Australia, so that people with cognitive impairment can have their rights and wishes safely upheld.

The matter of Ms N is an excellent example of this collaboration at work. When the Adult Safeguarding Unit (ASU) became concerned about the care arrangements for Ms N, they made an application to the South Australian Civil and Administrative Tribunal (SACAT) and the OPA were invited to the screening, in preparation for a possible guardianship appointment.

When the OPA staff attended the screening, they noted that there was an Advance Care Directive (ACD) in place, and discovered the willingness of the parties to resolve their conflict, as well as to bring their decision making into line with the section 10 principles of the ACD Act. The staff suggested that DRS involvement might be appropriate, and the matter was referred to the DRS immediately.

The DRS began a process of consulting with each of the interested parties around Ms N's care needs. This included the SACAT, the ASU, service providers, family and substitute decision makers – in order to narrow down the issues in dispute and explore the available options for resolution.

Through our involvement, a care plan was put in place for Ms N to enable her to stay at home, according to her expressed wishes and her ACD. Following this process, the parties all reported an improvement in communication, increased monitoring from doctors, and that Ms N was now receiving the appropriate level of care for her needs.

The parties decided not to mediate, and both the SACAT application and the DRS matter were closed. On follow up, six weeks later, the DRS confirmed that the agreement was still in place and, due to the effective collaboration between the ASU, the DRS and the SACAT, Ms N was still living at home, as per her wishes.



OPA Information Service

The provision of information and education to community members, health professionals and service providers is an important role of the OPA. Areas covered by the information and education services included adult protection, the SACAT application process, information on decision making capacity, guardianship and administration orders, and Advance Care Directives.

Information is provided in three main ways:

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

As part of our commitment to providing up to date and easy to understand information to the community, we have undertaken a project this year to update our complement of OPA fact sheets. The project has involved reviewing each of our 21 current fact sheets, including 3 easy read fact sheets. The 14 most relevant fact sheets were then re-written, in a simplified, easy to follow format, so that the answers to our most frequently asked questions are readily available. The process of finalising the fact sheets and making them available online is due to be finalised in August 2020.

Enquiries

In 2019–20 the OPA recorded 2505 enquiries to the Information Service on a wide range of issues. The three most common enquiries concerned guardianship matters (546), administration matters (416) and Advanced Care Directives (402).

The OPA experienced an increase in reports of concern for vulnerable adults, particularly following the sad death of Ms Ann Marie Smith in April 2020. The OPA worked with relevant authorities to ensure those matters were addressed and referred appropriately so those concerns received responses.

Education Sessions

The OPA delivers education to the community and our external stakeholders about the *Guardianship and Administration Act 1993 (SA)*, the *Mental Health Act 2009 (SA)*, the *Advance Care Directives Act 2013 (SA)* and the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*. In the Review of the Advance Care Directives Act, it was reported that:

'It is clear that OPA performs an extremely important function in educating both health professionals and members of the public.' (Report on the Review of the Advance Care Directives Act 2013 (SA), 2019, p. 71).

In 2019–20 we were honoured to give a comprehensive lecture for social work students at the University of South Australia, and to join with the SACAT to deliver a presentation to the Australian & New Zealand Society of Geriatric Medicine on guardianship, administration, Advance Care Directives and the consent Act. We have also invited many key stakeholders to participate in focused sessions at our OPA office, which were well received, and helpful for building these vital relationships with our community.

Table 9 gives an overall picture of our education services for this year:

Table 9: Education service 2019–20

	Jul–Dec 2019	Jan–Jun 2020	Total 2019–20
Sessions requested	18	16	34
Sessions delivered	16	7	23
Sessions denied	2	9	11
Participants	321	187	508

There has been increased interest in education in the area of Advance Care Directives, supported and substitute decision making, and restrictive practices this year.

Due to the COVID-19 situation in the second half of this financial year, the education service has cancelled or postponed 9 education sessions – which would have brought the total for the year to 32 sessions.



Overview

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

Disability Services in 2019–20

In 2019–20 the OPA continued to advocate for systemic improvements in the way that guardianship clients access disability services. There was a significant focus on the work of the NDIS Quality and Safeguards Commission as well as the use of restrictive practices. In the first half of 2020, COVID-19 impacted on face to face service delivery and the way in which clients with a disability could be supported was an important focus of our communications with disability providers, particularly as some services such as day centres closed.



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 2019–20, issues included:

- the South Australian Disability Inclusion Plan
- the transition of shared Department of Human Services and OPA clients to the NDIS
- the work of the Disability Advocate
- the use of restrictive practices and authorisation processes by the SACAT and the OPA as guardian
- the 31 Homes Project, providing accommodation for clients with psychosocial disability
- supported decision making and
- COVID-19 updates including the implementation of the *COVID-19 Emergency Response Act 2020* and responses from stakeholders.

National Disability Insurance Scheme (NDIS)

On 1 July 2017 South Australian adults aged 18 to 64 became eligible to access the NDIS which involved substantial change to the provision of personal support through greater choice and control for people with disability. The OPA had a critical role in supporting guardianship clients transitioning from state funded services to the NDIS, ensuring that there was no loss of essential services and supports.

As at 30 June 2020, 816 OPA clients were aged under 65 years and, therefore, potentially eligible for the NDIS. At this time, 687 (84.2 per cent) of OPA clients had an NDIS plan. A small number of OPA clients had been deemed eligible for access to the NDIS but were yet to have an NDIS plan. The OPA is working with the NDIA to support the remaining client's access the NDIS.

In 2019-20 the OPA received supplementary funding to assist the transition of OPA clients to the NDIS and to develop data reporting processes. The Department of Human Services is taking the lead on the overarching data sharing agreement between the NDIA and State government agencies. The agreement is due to be completed in 2020-21 and will enable us to more efficiently identify which OPA clients are not yet NDIS participants and why. This will assist our clients to access the scheme where they are eligible.

The OPA continues to advocate for OPA clients in relation to access to the NDIS and appropriate funding for supports. The OPA continues to meet with NDIA representatives on a regular basis to escalate and discuss systemic issues for OPA clients. During the year the OPA continued to build links with health services and non-government organisations and service providers. The OPA participated in regular NDIS related meetings, stakeholder forums and workshops, including:

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

The OPA raised implementation issues and outcomes at various forums:

Issues raised	Outcomes achieved
Risk of gaps in the market: that participants with high and complex needs will be unable to access a service due to thin markets.	Issue escalated to NDIA senior staff as the NDIA has the lead role as 'market steward'.
NDIS arrangements for crisis and after-hours issues, such as accommodation breakdown and homelessness.	In May 2020 the NDIA established an Exceptionally Complex Support Needs Pathway to provide for those NDIS participants who require an emergency after-hours response. Referrals to this service can only be made by approved referrers. At the moment SA Health, SAPOL and SA Ambulance Service are approved referrers. The OPA is seeking to become an approved referrer.
The OPA staff currently have difficulty speaking to the NDIA about a participant who is an OPA client without providing personal information such as their Medicare number. Once provided it is the individual staff member only whom the NDIA will speak with. This is the result of the NDIA not having mechanisms for recognising an organisation as a nominee or contact for a participant.	The OPA is participating in the NDIS Password pilot project with the NDIA and the Public Trustee. The project will allow OPA and PT staff to speak directly to the NDIA about a participant using a unique and secure password. Project completion is expected by mid-September 2020.
In 2019 the OPA made a submission to the Review of the <i>National Disability Insurance Scheme Act 2013</i> (the Tune Review) highlighting matters raised in consultations undertaken by the Disability Advocate in 2019.	The majority of recommendations submitted by the OPA to the Tune Review were adopted as recommendations. A number of these have also featured as recommendations in the Safeguarding Task Force which the Disability Advocate co-chaired.
In the early stages of the COVID-19 pandemic, the NDIA issued shopping codes to all participants to allow priority access to online grocery shopping. These codes were provided to the OPA for clients but did not identify the client name or NDIS number.	The OPA worked with the NDIA to undertake data matching and were able to decode the shopping codes, allowing them to be passed on to participants.
The OPA currently relies on DHS to undertake all data matching with NDIS data in order to identify shared clients and the breakdown of their NDIS status.	A data sharing agreement between the NDIA and State government agencies is being developed and will allow for more timely and accurate data.
Exceptionally Complex Support Needs Pathway	This new pathway enables referrals within the NDIA for people with high and complex needs. Many OPA clients have been supported by this pathway, which is of great benefit to them.

Disability Advocate

In November 2018 Dr David Caudrey was appointed Disability Advocate for South Australia for an initial one year term. This arrangement was extended and will continue until December 2020.



Located within the OPA, the role involves:

- hearing from NDIS participants and their families about their experience of the NDIS
- advocating so that South Australians with a disability get the best deal from the NDIS and
- undertaking leadership of projects at the request of the State government.

During calendar year 2019, over 180 stakeholder engagements were undertaken, including forums with participants and their families to gather first-hand accounts of their NDIS experiences. While there was an increasing level of satisfaction with the NDIS, many participants and their families have had serious issues with the way that the NDIA operates. They had difficulties with day to day operations including simple things like returning phone calls and answering emails, but also with the quality of the planning process. There was widespread confusion arising from the complexity of the scheme; there are many players (e.g. local area coordinator, planner, support coordinator, plan manager) but not a clear 'go to' person who will sort out any problems for you. Many people were frustrated about the time and effort they had to spend being their own case manager.

One particular issue impacting on the OPA's guardianship clients is the lack of a 'case management' system for people with complex support needs. It has been argued that OPA clients who meet eligibility for the NDIS should all be eligible for the NDIS Exceptionally Complex Support Needs Pathway.

Some of the messages emerging from stakeholder engagement and research are:

- the NDIS is a scheme with great potential and participants and their families would not want to return to the old state funded system
- State agencies that provide mainstream services to people with disabilities are sometimes second guessing whether their clients/patients will be eligible for the NDIS
- support coordination is not a substitute for case management when the participant needs it
- staff do not show enough respect for the knowledge that the individual or the family has of their disability and
- there are particular problems around transport and specialist disability accommodation.

The Disability Advocate produced monthly reports on NDIS operational issues (timeliness and accuracy of actions) and system issues (design matters) which were referred to State government departments and to the NDIA. In August 2019 the Disability Advocate's monthly report titled *Reducing Red Tape and Streamlining Business Processes* focused on three clusters of issues:

1. Basic customer service problems:

- not responding to phone messages or emails at all or in a timely manner
- not getting plans right the first time
- taking far too long to get back with a plan and
- significant delays in unscheduled plan reviews.

2. Operational problems:

- mismatch between what the participant says at the planning session and what they get back from the NDIA in their plan
- no clear point of contact within the NDIA for participants
- additional medical assessments/reports requested by the NDIA for participants exiting hospitals and forensic institutions and
- public statutory guardians not being recognised as the participant's substitute decision maker.

3. System design problems:

- NDIA consent mechanisms causing delay and double handling
- support coordination as an individualised component of a participant plan does not work for all participants, particularly those with complex needs who require ongoing case management if they are to gain from the NDIS
- no clear crisis response by the NDIA or escalation pathway and
- NDIA's inability to respond quickly to sudden changes in circumstances.

In September 2019 the OPA and the Disability Advocate made a submission to the review of the *NDIS Act 2013* by David Tune (the Tune Review). This submission was based on the findings of the Disability Advocate's work across 2019 identifying 20 red tape issues and recommendations to reduce red tape and streamline business processes.

The Disability Advocate co-chaired (with Kelly Vincent, Disability Rights Advocate) a Safeguarding Task Force to investigate safeguarding gaps for people with disabilities following the sad death of Ms Ann Marie Smith in April 2020. An interim report was submitted to the government on 15 June 2020 and was published the day after. The interim report identified 12 safeguarding gaps and made 5 recommendations, all of which the government has accepted. Eight gaps concerned the NDIA or the NDIS Quality and Safeguards Commission but the key matters for the State were:

- regular health checks for vulnerable people
- extending the scope of the Adult Safeguarding Unit
- improving information exchange for the Worker Screening Unit and
- the scope of the Community Visitor Scheme.

The Disability Advocate also played a significant role, both within the OPA and across government, with respect to the definition, authorisation and use of restrictive practices. This is a key issue for the rights of people with disabilities and for addressing how those rights can be enshrined in law and policy.

Unmet Need for People with Impaired Decision Making Capacity Accessing Disability Services

1. Appropriate Supported Accommodation Options

The OPA has highlighted in its advocacy activities for a number of years the issue of a lack of suitable housing options, including supported independent living options, for people under guardianship.

In 2019–20, the shortage of supported accommodation options has caused delays for a number of people under guardianship who wish to move to accommodation which would better meet their needs and ensure their safety whilst enhancing their rights and independence. For some people with particularly complex needs, it has resulted in lengthy periods in hospital and at times has put people at risk of becoming homeless.

As guardian, the OPA will sometimes need to make accommodation arrangements for our clients based on available resources rather than on a person's expressed wishes, what would better meet their needs, or what would maximise their independence, choice and control. In these situations, the OPA advocates to ensure that the accommodation meets a client's needs and wishes as far as practicable.

At the end of 2019–20 the OPA had approximately 34 guardianship clients who were under 65 and living in residential aged care facilities. Many of this group of clients would more appropriately be housed in disability supported accommodation but there is a significant gap in the market for this type of housing.

31 Homes Project

As part of the '100 Homes Project for people living with disability', the South Australian Housing Authority (SAHA) committed to building 31 mental health specialist disability accommodation properties, which included 25 to be allocated to mental health consumers and 6 for dual disability consumers. Six properties are located in country regions with the remaining 25 being located across the Adelaide metropolitan area. The project is a subset of SAHA's '1,000 Houses in 1,000 Days Initiative'.

The 31-purpose built mental health specialist disability accommodation houses are supporting the transition of long-term mental health forensic, primarily James Nash House and Glenside Inpatient Rehabilitation Services, inpatients with a primary psychosocial disability and extreme functional impairment. This cohort requires 24 hour, 7 day a week support to live in homes of their own in the community.

A total of 22 OPA clients are part of the 31 Homes Project. As at 30 June 2020, 10 OPA clients had moved into their homes and 7 more are actively in the process of transitioning.

Plans continue for remaining consumers to commence transition, but COVID-19 is slowing the process.

The 31 Homes initiative has been very welcome. However, housing will continue to be an issue for people with disabilities without a steady supply of disability specific housing options. This continued unmet need comes at a cost to the state because some people with disabilities (including psychosocial disability) who could be supported to live in the community with the right type of housing can occupy inpatient beds or inappropriate housing for extended periods of time.

In South Australia, an increased supply of independent supported accommodation with tailored services to meet individual need and choice is needed. The NDIS market approach is an opportunity for development of more flexible and tailored supported independent living options. However, providers offering services to South Australians with the most complex needs must ensure the quality and safety of their services, including that their staff are appropriately trained to deliver services.

2. Behaviour Support and Restrictive Practices

What are Restrictive Practices?

The OPA continues to advocate for the reduction and elimination, where possible, of restrictive practices.

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

Restrictive practices include: using medication for the main purpose of stopping or managing someone's behaviours (chemical restraint); restricting a person's access to parts of their environment (environmental restraint); using devices primarily to stop or manage a person's behaviour (mechanical restraint); using some physical force to stop the person's behaviour (physical restraint); and detaining a person in the place that they live or stay so that they cannot leave if and when they want to (seclusion and/or detention).

In 2019–20, the issue of restrictive practices grew in significance in South Australia with increased awareness of the NDIS Commission’s role in monitoring the use of restrictive practices for NDIS participants.

The NDIS Commission is responsible for the registration and regulation of NDIS service providers. This includes the monitoring of registered NDIS providers’ use of certain types of restrictive practices (regulated restrictive practices). However, the legal requirements for authorisation of restrictive practices are set out under the laws of the States and Territories. In 2019–20, it was a challenge for NDIS participants (and their support networks and guardians) and providers in South Australia to understand the interplay between the Commonwealth (NDIS) and South Australian legislation about restrictive practices.

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

In 2019–20 the OPA’s guardianship activities have included significant work on restrictive practices. In addition, the OPA’s Information Service has experienced increased contact from providers and members of the public about restrictive practices.

The Public Advocate, together with the NDIS Commission, delivered a number of education sessions to NDIS providers about the authorisation of restrictive practices in South Australia. These sessions were conducted in both metropolitan and country areas of the state.

People with impaired decision making capacity accessing disability services have an unmet need for a clear and consistent system for authorising restrictive practices, and for accessible information about the current system.

The Public Advocate has reported to ministers about the complexities and possible gaps in the consent and authorisation process for restrictive practices in South Australia. As a result, the Disability Advocate and the OPA have been involved in making recommendations for reform in this area in South Australia.

The NDIS Commission’s rules require that a behaviour support plan is obtained to address any restrictive practices which are proposed by registered NDIS providers. There continue to be delays in obtaining behaviour support plans for individuals where restrictive practices are used. It appears to the OPA that there continues to be a lack of suitably qualified behaviour support practitioners operating in South Australia to meet the demand for production of timely behaviour support plans.

3. Safeguarding Enhancements for People Accessing Disability Services

The Adult Safeguarding Unit (ASU) within the Office for Ageing Well in the DHW began operating in October 2019 with powers to investigate allegations of abuse or neglect of persons aged 65 and over and for Aboriginal and Torres Strait Islander people over the age of 50 years. At the time of writing, the ASU is due to extend its scope of operation to vulnerable adults of any age living with disability earlier than originally intended.

The issue of safeguarding adults under 65 years with disability is a critical area of concern. The sad death of Ms Ann Marie Smith in April 2020 highlighted potential gaps in systems for safeguarding people with disabilities. In particular, Ms Smith's death emphasised gaps in preventative measures for safeguarding vulnerable adults with disabilities as well as in clear pathways for the referral and investigation of concerns.

On 21 May 2020, the Minister for Human Services established the Safeguarding Task Force (Task Force) to report on gaps and areas for strengthening safeguarding arrangements for people with disability in South Australia. The Disability Advocate co-chaired the Task Force with Kelly Vincent, Disability Rights Advocate, and the Public Advocate is a member of the Task Force.

The Task Force published its interim report in June 2020, which identified twelve safeguarding gaps. The gaps identified included (among others) that:

1. support coordinators can be from the same agency as that which provides core support services to NDIS participants, which creates a conflict of interest
2. NDIS participants need to be provided links with the community to participate in community activities
3. there are no proactive visits undertaken by the NDIS Commission to NDIS participants, to vet the performance of service providers
4. the NDIS Commission should require all providers of personal support to have at least two support workers for that individual (not necessarily at the same time) and that workers in the participant's home have regular supervision.

Included in the Task Force's interim recommendations were that:

1. the South Australian government communicate with the Commonwealth government about all matters raised in the Task Force's interim report so that they can be urgently addressed
2. the role of the ASU be expanded so that it can investigate safeguarding concerns about adults of any age and
3. the South Australian government reaffirms the value of the Community Visitor Scheme as a valuable resource for safeguarding vulnerable NDIS participants, working within relevant Commonwealth legislation.

The OPA supports all of the recommendations made by the Task Force.

Going into 2020–21, the OPA has been closely collaborating with State and Commonwealth government departments and agencies to work on mapping referral pathways for people who have safeguarding concerns about people with disabilities in South Australia.

4. Separate Disability and Mental Health Forensic Services

The OPA has advocated for some time about the need for a specialist inpatient forensic disability facility which is separate from the inpatient forensic mental health facility at James Nash House. Whilst a number of specific disability beds were funded by the South Australian Forensic Mental Health Service, they were co-located with inpatient forensic mental health services at James Nash House. Toward the end of 2018–19, the Forensic Mental Health Service developed a proposal for an inpatient forensic disability ward located at Glenside campus. That ward, the Tarnanthi/sub-acute ward began operating in 2019–20 and has 10 forensic disability beds. This is a welcome development helping to meet the need of forensic patients with intellectual disability.

The OPA continues to work closely with James Nash House about the needs of forensic patients with impaired decision making capacity. The OPA has also continued to liaise with the NDIA about both individual issues relating to clients under guardianship and systemic issues about timely discharge planning for people transitioning from forensic services and prisons. In addition, people in prison or forensic accommodation do not have the same access to disability services and support as other members of the community.

Addressing Unmet Need in the Disability Sector

Intersectionality of Services Group

In February 2020, the Public Advocate and others met with the Minister for Human Services to discuss service and system connections for people living with disability. As a result the Public Advocate convened a group of leaders from a range of sectors, including government and non-government disability service providers and advocates, housing and homelessness, family and domestic violence, health and the National Disability Insurance Agency. The group is working to identify improvements to connecting services and dealing with challenging situations for people navigating service systems. This is important with the numerous reforms in various sectors, particularly disability.

The group has met 3 times in the reporting period to discuss the following issues:

- clarifying the scope of services and eligibility for access to services
- identifying escalation pathways and gaps in services
- case studies relating to access to disability services, housing and domestic violence services and
- improving the interaction between the State, the NDIA and non-government agencies.

Following are some actions by the group to date:

- strengthened networks and referral pathways between the agencies resulting in good outcomes for some complex cases
- identifying and describing the current escalation pathways for agencies when advocating for an NDIS participant
- the identification of domestic violence for NDIS participants and how this can be better detected and addressed in a person's plan, and if not detected what other steps can be taken
- identifying a need for specific training for NDIS planning staff to recognise a vulnerable person at risk of domestic violence and to make the appropriate referrals and inclusions in NDIS plans
- sourcing specialist disability accommodation and the challenges in identifying specialist housing for people with specific and complex needs in a market place environment and
- identifying ways to streamline the planning and approval processes for accommodation.

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

1. a greater supply of supported independent living options for people with disabilities (including psychosocial disabilities), particularly those under guardianship with complex needs
2. law reform in the area of restrictive practices, to modernise the process and align with the approach of the NDIS
3. greater supply of suitably trained behaviour support specialists
4. expansion of the scope of the ASU, to include vulnerable adults under the age of 65, earlier than the planned expansion in 2022
5. adoption of the recommendations of the Safeguarding Task Force at the State and Commonwealth government levels
6. measures to ensure or promote the need for 'separation' of providers so that support coordination and accommodation services providers are distinct from other core support providers.
7. improved access to the NDIS, and earlier discharge planning, for people in correctional/forensic settings.

Mental Health Services in 2019–20

The OPA’s advocacy in respect of mental health services in 2019–20 focused on the transition of people with psychosocial disability to the NDIS as well as inpatient rehabilitation services.



NDIS and Psychosocial Disability

Since the commencement of the NDIS the OPA has assisted guardianship clients with a psychosocial disability to transition to the NDIS, and this work continues. All clients with psychosocial disability in receipt of services were due to transition to the scheme by 30 June 2019 but this has not yet been fully completed.

In 2019–20, the OPA fostered its links with mental health services and non-government organisations to support this client group as they make the transition to the NDIS. The OPA participated in the South Australian NDIS Psychosocial Disability Transition Taskforce during 2019–20. The task force is led by the Office of the Chief Psychiatrist and monitors the impact of the NDIS transition arrangements on clients and service providers, with a focus on ensuring continuity of service for clients, developing solutions and advising on appropriate action. The task force meets monthly and comprises State and Commonwealth government agencies, a range of non-government agencies and representatives with lived experience of psychosocial disability.

Particular challenges arise for people with psychosocial disability entering the NDIS, including the tension between the emphasis on ‘recovery’ inherent in many mental health services and the NDIS’s criterion of enduring disability, and the interplay between health and disability. This tension has been acknowledged by the NDIA by their initiative to create “recovery coaches.”

Glenside Inpatient Rehabilitation Service

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

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

The Public Advocate continued involvement as a member of the Steering Committee during 2019–20. There were significant improvements made during the year including reducing restrictive practices, reducing the use of security guards and increased inpatient participation. The new model of care is currently under development with a strong focus on rehabilitation.

Unmet Need for People with Impaired Decision Making Capacity in Mental Health Services

1. Appropriate Accommodation

As is the case for South Australians with complex disabilities generally, there is a lack of supported accommodation for people with mental health conditions. A number of OPA guardianship clients with mental health conditions have needed to stay in inpatient settings, and sometimes in prison, for inappropriately long periods.

The Housing and Support Partnership (HASP) Program in South Australia remains in high demand. This program is a State government initiative operating as a four way partnership between the consumer, a housing provider, psychosocial rehabilitation and support services and community mental health services. HASP is a good model for many people but there are not enough HASP packages to meet demand.

Supported residential facilities (SRFs) remain one of the only other community based supported housing options for consumers of mental health services. The SRF sector is an important housing option for OPA guardianship clients as they are often not able to find alternative suitable accommodation. However, people with complex needs and behaviours of concern are often assessed as ineligible for SRF accommodation because of the high level of support and supervision they require. For others who are eligible for SRF accommodation, the nature of large scale congregate living and, in some cases, the sharing of rooms, may not be appropriate for their circumstances if they have complex mental

health needs. There are no female only SRFs, meaning that female residents can be vulnerable in this type of accommodation.

Of the 100 disability specific homes built as part of the 1000 Homes in 1000 Days project, 31 psychosocial disability–specific homes were built. The OPA welcomed this initiative and had a number of clients move into these homes. However, without a steady supply of disability specific housing options, housing will continue to be an issue for people with mental health needs. The number of people for whom it is very difficult to secure appropriate supported accommodation at any given time is relatively low. However, the ability to more easily identify appropriate accommodation for people with these highly complex needs can have a significant impact on people receiving the support they need and freeing up other resources such as hospital beds.

2. Psychosocial Disability Transition to NDIS

It was estimated by the Productivity Commission that 4800 people in South Australia with a primary ‘diagnosis’ of psychosocial disability would be eligible for the NDIS under the full scheme. At 30 June 2020 there were 1740 South Australians with psychosocial disability participating in the NDIS, which represents approximately 36 per cent of people with this type of disability who may be eligible. It is hoped that in future the NDIS will assist more of these clients.

Addressing Unmet Need in the Mental Health Sector

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

1. development of a broad range of accommodation options that includes access to independent living accompanied by 24 hour support
2. increased focus on identifying people with psychosocial disability who may be eligible for NDIS support and ensuring that access requests are made to the NDIA.

Aged Care in 2019–20

In 2019–20 the OPA continued to advocate that the rights of older people be preserved and respected as they engage with aged care services. The OPA provided a number of education sessions for both aged care providers and people in the community covering areas including Advance Care Directives, consent to medical treatment under the *Consent to Medical Treatment and Palliative Care Act 1995* (SA), supported decision making and restrictive practices.

During 2018–19 the OPA was involved in a Supreme Court of South Australia case about detention in a residential aged care facility. The case has important implications about when special powers orders under section 32 of the *Guardianship and Administration Act 1993* (SA) are needed to authorise detention in residential aged care facilities. During 2019–20, the OPA dedicated significant time and resources to assessing the implications of the case and assisting aged care providers (and disability service providers) by providing information about issues relating to detention and special powers. The OPA also commenced reviewing all of its guardianship clients, aged care and disability clients alike, to determine whether special powers orders of detention are required and developed a process for systematically applying for SACAT orders where necessary. This has generated additional reviews of guardianship orders for the OPA.

My Aged Care

The OPA continues to highlight that there are issues in using the My Aged Care online portal, which is the starting point for access to aged care services. Many people have reported difficulty accessing the portal and it is especially confusing for people acting as representatives. In March 2018, the Australian Guardianship and Administration Council (AGAC) advocated extensively for reform in this area and the Commonwealth Department of Health produced a guide for representatives to use the system.

Although the guide has been released, the difficulties remain for organisations representing people needing care (such as the OPA when acting as guardian) because there is no provision for an organisation log in.

The OPA could more efficiently support people under guardianship who are receiving, or trying to receive, aged care services if improvements were made to the way in which organisational representatives can engage with My Aged Care and without access to the portal, the OPA staff follow a more time consuming, manual process for registering as the representative of a person under guardianship. Similar barriers to the online system exist with this process. During 2019–20 the OPA continued to advocate for the development of better systems, including organisational MyGov accounts, for engaging with My Aged Care.

Restraints Principles

On 1 July 2019, Commonwealth Government laws called ‘the Restraints Principles’ came into effect. The Restraints Principles were introduced to limit the use of restrictive practices in aged care. The introduction of laws which oblige residential aged care providers to take particular steps before using restrictive practices is very welcome. However, they have created some confusion in South Australia about the interaction with South Australian legislation governing consent to medical treatment. In particular, there have been questions about the need for consent to chemical restraint from the representative of a person with impaired decision making capacity. At times, the difference between treatment for a mental health condition and chemical restraint is not always clear. It is hoped that this will become clearer as a result of the new Restraints Principles. In addition, the Restraints Principles do not completely align with the Commonwealth’s NDIS legislation and rules relating to restrictive practices.

Unmet Need for People with Impaired Decision Making Capacity Receiving Aged Care Services

1. Restrictive Practices

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

The use of restrictive practices by aged care providers should be both minimised and regulated. While the introduction of the Restraints Principles is a step in that direction, they should be made clearer and go further. Greater alignment with the NDIS laws and rules about behaviour support and restrictive practices would be welcome, including the preparation of (and even requirements for) high quality behaviour support plans.

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

2. Receiving Necessary Care at Home

Evidence heard by the Royal Commission into Aged Care Quality and Safety has demonstrated that there continues to be considerable unmet demand for home care packages, and that the average wait time for level 3 and 4 home care packages is more than 12 months.

As reported in previous years, in the OPA's experience of making guardianship decisions for older people, the delay in receipt of home care packages can sometimes lead to people having to enter residential aged care prematurely. Sometimes situations arise where:

- the person cannot safely remain at home while waiting for a home care package or
- the person has been admitted to hospital during a health crisis, but is ready for discharge. The person cannot safely return home without a home care package but it is not appropriate that they remain in a hospital bed for months while they wait for the home care package.

In these situations, the OPA often has to consent to a residential aged care placement as the next most appropriate accommodation to ensure that the person is properly cared for and protected.

There must be quicker access to home care packages for older South Australians who are assessed as needing them. For this to happen there must be more home care packages available at all levels and a more streamlined approach to assessment and design of care packages.

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

Addressing Unmet Need in the Aged Care Sector

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

1. development of a nationally consistent legal framework for the regulation and authorisation of restrictive practices in aged care, which aligns with NDIS definitions as far as possible
2. market expansion in the areas of suitably trained positive behaviour support specialists who have training/expertise in dementia and the needs of older people
3. an increase in the number of Commonwealth-funded home care packages, with more prompt access for people who have been assessed as needing them
4. recognition of the role of supported decision making in assisting older people to access services that accord with their wishes and preferences.

Elder Abuse and Safeguarding Adults



The OPA is active in promoting the rights of people with impaired decision making capacity.

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

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

The Adult Safeguarding Unit (ASU)

The *Office for the Ageing (Adult Safeguarding) Amendment Bill 2018* (Cth) was passed by Parliament on 14 November 2018 and the South Australian Adult Safeguarding Unit started operating in October 2019. The establishment of the Adult Safeguarding Unit (ASU) is an important development for the prevention and detection of elder abuse. The OPA supports the expansion of the scope of the ASU to include all vulnerable adults experiencing or at risk of abuse or neglect at the earliest opportunity. During 2019–20, the OPA had a close working relationship with the ASU and a Memorandum of Administrative Arrangement was developed to govern the interaction between the two agencies.

Alliance for the Prevention of Elder Abuse (APEA)

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

The OPA continues its membership of the APEA with the aim of empowering community members. The APEA has developed written publications including *Witnessing Documents*, *Safeguard your Finances*, *Appointing an Enduring Power of Attorney*, *The Duties and Responsibilities of Your Enduring Power of Attorney* and *Recipes for Living Well*.

These valuable resources and other publications can be found on the APEA website:

www.apea.org.au.



OPA Initiatives/Projects

Supported Decision Making

Following on from the number of research and practice projects that the OPA has completed in the area of supported decision making over the last three years, the OPA continued to chair a Supported Decision Making Interest Group in 2019–20. This group brings together relevant stakeholders to share ideas and experiences in implementing supported decision making in South Australia.

The OPA, in partnership with the South Australian Health and Medical Research Institute, successfully applied for an NDIA Information, Linkages and Capacity Building grant to do some further research and implementation of supported decision making for OPA clients who are NDIS participants. This is an exciting opportunity for further practice based work to implement supported decision making for people accessing the NDIS with the aim of promoting the rights of people with impaired decision making capacity and increasing choice and control.

What is Supported Decision Making?

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

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

In 2014 the Australian Law Reform Commission developed a set of National Decision Making Principles which provide a framework for the review of State, Territory and Commonwealth legislation.

My Life Decisions Initiative

In 2017 the OPA completed a project aimed to enable people with impaired decision making capacity, and who therefore could not make a legally binding Advance Care Directive, to document their future wishes. The project, called 'Goals of Care', was led by the OPA and Margaret Brown, Adjunct Research Fellow, UniSA Justice and Society, University of South Australia. The final draft report was completed in early 2018. The research indicated that development of a document for recording wishes in respect of life decisions may:

- assist all interested parties in documenting and understanding people's wishes and avoid crisis management
- assist health professionals to understand 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.

The OPA and Margaret Brown built on this work during 2018–19 and developed a My Life Decisions document. During 2019–20, the OPA engaged with the Department of Human Services (DHS) to design a project trialling the My Life Decisions document with shared DHS and OPA clients. This work is ongoing.

Business Improvement Projects

Organisational Reporting and Systems Improvements

In 2019–20, the OPA developed system improvements to assist in workflow and organisational reporting in two key areas: tracking client visits and notifications to the Public Advocate. The improvements to reporting on notifications made to the Public Advocate has increased our ability to monitor trends relating to the reporting of critical incidents or alerts which, in turn, increases the OPA's ability to safeguard guardianship clients.

The OPA also identified a number of other system improvements, including the framework for recording decisions and compliance with delegations of the Public Advocate's authority. These improvements will be delivered early in 2020–21 to develop business intelligence to inform quality decision making.

Business Continuity During COVID-19

Continued Delivery of Services

In March 2020, the OPA implemented its business continuity plan to enable the OPA to continue to deliver essential guardianship, information and dispute resolution services to South Australians. In a short period of time, the OPA was able to transition to staff working predominantly from home using technologies and adopting a paperless working strategy. In order to continue to connect with our guardianship clients, we developed a process for 'virtual' client visits by telephone or audio-visual links. The OPA is now in the process of reviewing the arrangements that were implemented to respond to the COVID-19 pandemic to consider what changes might be adopted more permanently and how to further refine our business continuity plan for future needs.

Engagement

Meetings

In 2019–20, the Public Advocate met with key ministers to discuss systemic issues. Meetings were held with the following ministers and Members of Parliament:

- Hon Vickie Chapman MP, Deputy Premier, Attorney-General
- Hon Stephen Wade, MLC, Minister for Health and Wellbeing and
- Hon Michelle Lensink MLC, Minister for Human Services.

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

- transition of OPA guardianship clients to the NDIS and NDIS operational issues
- supported decision making
- restrictive practices
- adult safeguarding
- supply of supported accommodation for people with complex needs
- the '1000 Homes in 1000 Days' initiative (including the 31 psychosocial disability homes) and
- the review of the *Advance Care Directives Act 2013*.

Written Submissions

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

- SA Housing and Homelessness Strategic Intent
- Disability Advocate monthly reports. Topics included:
 - feedback on the SA Health Intellectual Disability Health Services Model of Care
 - feedback on the new research and evaluation program at the NDIS
- Submission to the Tune Review of the *NDIS Act 2013* and
- Feedback on the SA Electoral Commission's draft Disability Access and Inclusion Plan, in the OPA's capacity as a representative on the Electoral Commission's Disability Access Committee.

Appendices

Appendix 1: Legislation

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

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

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

Other Applicable Legislation

Advance Care Directives Act 2013 and Regulations

Consent to Medical Treatment and Palliative Care Act 1995 and Regulations

COVID-19 Emergency Response Act 2020

Criminal Law Consolidation Act 1935

Mental Health Act 2009

Mental Health Regulations 2010

Powers of Attorney and Agency Act 1984

Problem Gambling Family Protection Orders Act 2004

Wills Act 1936

Appendix 2: List of Acronyms

ACD	Advance Care Directive
AGAC	Australian Guardianship and Administration Council
APEA	Alliance for the Prevention of Elder Abuse
ASU	Adult Safeguarding Unit
CALHN	Central Adelaide Local Health Network
CVS	Community Visitor Scheme
DHS	Department of Human Services (SA)
DHW	Department for Health and Wellbeing (SA)
DRS	Dispute Resolution Service
ECT	electro-convulsive therapy
HASP	Housing and Support Partnership
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
SACAT	South Australian Civil and Administrative Tribunal
SAHA	South Australian Housing Authority
SRF	supported residential facility

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

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

PC013 Statutory Reporting Requirement	
Employment opportunity programs	Refer to the Attorney-General’s Department (AGD) Annual Report 2019–20
Agency performance management and development systems	Refer to the AGD Annual Report 2019–20
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2019–20
Work health and safety and return to work performance	Refer to the AGD Annual Report 2019–20
Fraud detected in OPA	Number of instances: 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2019–20
Whistle-blowers’ disclosure	Refer to the AGD Annual Report 2019–20
Executive employment in the agency	Refer to the AGD Annual Report 2019–20
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2019–20
Complaint outcomes (table)	Refer to the AGD Annual Report 2019–20

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