

OFFICE OF THE PUBLIC ADVOCATE

Annual Report 2020-21



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OFFICE OF THE PUBLIC ADVOCATE

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Date presented to Minister: 27 September 2021

Acknowledgement of Country

Aboriginal people have made and continue to make a unique and irreplaceable contribution to the state of South Australia.

The Office of the Public Advocate (OPA) acknowledges and respects Aboriginal people as the state's first people and nations and recognises Aboriginal people as traditional owners and occupants of South Australian land and waters.

The Office of the Public Advocate acknowledges that the spiritual, social, cultural and economic practices of Aboriginal people come from their traditional lands and waters, and that Aboriginal people maintain cultural and heritage beliefs, languages and laws which are of ongoing importance today.

Terminology

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

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

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The Hon Vickie Chapman MP
Deputy Premier
Attorney-General

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 OPA during 2020–21. There were many highlights and achievements for the OPA during the year, including collaborating with the Public Trustee regarding joint clients, collaborating with key agencies and stakeholders, reform in the area of restrictive practices and providing high quality community education.

The COVID-19 pandemic continues to impact on the OPA, on the way we interact with our clients and members of the public, on adjusting to the vaccine roll out, and on finding a ‘new normal’ way of working. The OPA team continue to rise to the challenge during this unusual time.

I express thanks to the OPA staff for their ongoing commitment and support whilst working with South Australians who require assistance with decision making, adult guardianship, dispute resolution about advance care directives and consent to medical treatment, and providing general information and education to the South Australian community as well as the disability, health and aged care sectors.

Submitted on behalf of the Office of the Public Advocate by



Anne Gale
Public Advocate

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Introduction

Message from the Public Advocate

The Office of the Public Advocate assists in decision making, guardianship and dispute resolution for its clients and broad system advocacy on behalf of all South Australian adults with cognitive challenges.

The Office of the Public Advocate continues to experience a significant increase in the number of clients under guardianship and, as an organisation, we will meet the challenge of a growing demand for our services and ensure a focus on safety and quality.

In 2020–21 the OPA had an increase in both guardianship applications (increase of 7 per cent) and new guardianship appointments (increase of 10 per cent), as 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 (or authorisation) for the use of restrictive practices.

Like many organisations, COVID-19 is having a significant impact on the OPA. Not only have we found new ways of working, but we have also taken steps to ensure the safety of our clients through exercising legislated powers given to the OPA to ensure client safety, particularly during cluster events, and providing consent for our clients to receive the appropriate vaccinations.

Our sector and the community continue to be saddened by the death of Ms Ann Marie Smith. The Disability Advocate Dr David Caudrey and Disability Rights Advocate Ms Kelly Vincent delivered the final report in September 2020 on behalf of the Safeguarding Task Force with recommendations to address gaps in safeguarding for people with disability in South Australia in the July 2020.

In June 2021 I gave evidence before the Disability Royal Commission. I used the opportunity to highlight the need for state and Commonwealth agencies to work together to ensure that safeguards and checks are implemented for the most vulnerable South Australians.

The OPA continues to collaborate with the South Australian Department of Human Services (DHS), the state Department for Health and Wellbeing (DHW) and non-government service providers to ensure that OPA clients who are participants in the NDIS are able to fully access the scheme and get the best possible plan for their future.



We have also strengthened information-sharing practices with our colleagues in the office of the Public Trustee. This has helped us work together to resolve complex issues and coordinate programs so that we can ensure safeguarding for our clients.

2020-21 Snapshot

a quick look at the numbers



528 new guardianship

293 guardianship files closed

1817 total clients assisted throughout the year

1524 active clients on 30 June 2021

383 COVID-19 vaccination consents

942 clients with an NDIS plan



56 new dispute resolution applications

44 finalised dispute resolution applications



15 written submissions from the Public Advocate



2171 enquiries to the information service



33 education sessions delivered

1011 participants attended an education session

Key issues and reform

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

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established in April 2019 in response to community concern about widespread reports of violence against, and the neglect, abuse, and exploitation of, people with disability.

The Royal Commission is investigating ways of:

- preventing and better protecting people with disability from experiencing violence, abuse, neglect and exploitation
- achieving best practice in reporting, investigating and responding to violence, abuse, neglect and exploitation of people with disability
- promoting a more inclusive society that supports people with disability to be independent and to live free from violence, abuse, neglect and exploitation.

The Royal Commission was initially expected to submit its final report in 2022 but was granted an extension due to the disruption to hearings caused by COVID-19 and in recognition of the broad scope of the issues. The final report is now due on 29 September 2023.

Public Hearing 14: Preventing and responding to violence, abuse, neglect and exploitation in disability services (South Australia) was held in Adelaide between 7 and 11 June 2021. This hearing examined the experiences of two people who received disability accommodation services provided by the Department of Human Services (DHS) in South Australia and the response of the DHS to incidents and complaints raised by the residents' families.

The hearing also focused on the recommendations of the South Australian Safeguarding Task Force report dated 31 July 2020, and the report of the Honourable Alan Robertson SC, *Independent review of the adequacy of the regulation of supports and services provided to Ann Marie Smith, an NDIS participant, who died on 6 April 2020*. The hearing examined the response of South Australian agencies, the National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission (NDIS Commission) to those reports.

The Public Advocate provided a statement to the Royal Commission in her roles as Public Advocate and Principal Community Visitor, addressing issues relating to people living with disability and specifically clients of the Public Advocate. She also appeared before the Royal Commission on Wednesday 9 June 2021 to provide further detail.

In her evidence the Public Advocate acknowledged that just because a person has a disability does not mean that they are vulnerable. An individual's vulnerability is not static. A person may be independent and well connected for the majority of their life, but if these circumstances change, they may find themselves more vulnerable. Conversely, people can

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become less vulnerable over time. The clients of the OPA are some of South Australia's most vulnerable people.

The Public Advocate told the Royal Commission that she is particularly concerned about the heightened risks of violence, abuse, neglect and exploitation of OPA clients with disability in certain circumstances. These include:

- identifying and accessing appropriate accommodation in a timely way;
- navigating complex and lengthy NDIS assessment and approval processes for support and housing;
- the insecurity of service provision in a market-based system, in which service providers may withdraw services to clients with complex needs, at short notice, causing further disruption and instability in their lives; and
- accommodation and support services being provided by the one service provider:
 - If the provider can no longer support the client and withdraws their services, the provider will generally also attempt to terminate the accommodation arrangement. The client must then either source alternative accommodation or face homelessness.
 - There is potential for a conflict of interest to arise if a service provider is both the supported independent living provider and the housing provider.
 - Having a range of different service providers involved in a person's life provides additional eyes to monitor the person's safety and wellbeing. A single service provider reduces the external oversight around the services/ support for the NDIS participant.

The Public Advocate discussed potential safeguarding measures, such as continuous risk assessment for NDIS clients, and the need for state and Commonwealth agencies to work together to ensure the NDIS provides appropriate and safe support for vulnerable South Australians. A copy of the written statement is available [here¹](#). The transcript of the Public Advocate's oral evidence to the Royal Commission is available [here²](#). Links to the statement and transcript will also be available on the [OPA website](#).

Restrictive practices

Restrictive practices are acts which restrict a person's rights and freedom of movement to reduce the risk of physical harm arising from the person's behaviour. Restrictive practices must only be used as a last resort for people who have impaired decision-making capacity if there is no other positive way to reduce the risk of harm. The OPA advocates for the reduction and elimination of restrictive practices wherever possible.

¹ <https://disability.royalcommission.gov.au/system/files/exhibit/STAT.0363.0001.0001.pdf>

² Transcript Day 3 - Public hearing 14, Adelaide (royalcommission.gov.au)

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The 2019–20 Annual Report reported on the increase in the OPA’s guardianship activities in relation to restrictive practices, particularly for guardianship clients who were NDIS participants. That trend continued during 2020–21 and was addressed by the OPA undertaking a specialist restrictive practices guardianship project. The project provided specialist support to the OPA’s guardianship function in order to achieve efficiencies in providing authorisations of restrictive practices.

The Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021 was introduced to the South Australian Parliament on 4 March 2021 and was passed by both Houses on 11 May 2021. This new legislation amended the *Disability Inclusion Act 2018* and sets out a new regime for the authorisation of restrictive practices for NDIS participants in South Australia which aims to better protect the rights of people with disability whilst keeping people safe. The new legislation makes the authorisation of restrictive practices independent from guardianship. NDIS service providers will be able to authorise certain low-level restrictive practices.

A Senior Authorising Officer will be appointed and will sit within the DHS (reporting to the Chief Executive) to approve higher-level restrictive practices and review authorisations made by service providers. The new system for authorisation of restrictive practices for NDIS clients is due to be implemented during 2021–22. The OPA’s role in this area will change but it is anticipated that it will remain significant in terms of approving positive behaviour support plans in response to restrictive practices.

On 27 May 2021, amendments to the legislation relating to restrictive practices in aged care settings was introduced to the Commonwealth Parliament in the Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021. These changes place greater onus on providers of residential aged care to ensure that restrictive practices are properly authorised along with positive behaviour support plans in accordance with the laws of the states and territories. This is likely to have an impact on the guardianship function of the OPA, given that the process for authorisation of restrictive practices for people in aged care in South Australia remains largely governed by the *Guardianship and Administration Act 1993*.

Housing

The Public Advocate has for many years reported on the scarcity of community and other supported and specialist disability accommodation options for people with complex needs. The introduction of the NDIS has further highlighted and exacerbated the nature of the problem. Accommodation arrangements can break down at short notice. The combination of a thin accommodation market and the absence of an accommodation provider of last resort has resulted in people with disabilities who also have behaviours of concern increasingly facing homelessness and/or extended stays in inappropriate housing including hospitals or hotels when housing arrangements break down.

Related to this is the increasingly common practice of service providers offering joint provision of NDIS-funded supported independent living (SIL) and accommodation to an NDIS participant. Whilst these arrangements are not prohibited under NDIS rules and guidelines, they can give rise to a conflict of interest where the NDIS service provider and the accommodation provider (landlord) are the same or related entities. NDIS participants subject to such arrangements are at increased risk of homelessness, as a breakdown in SIL service arrangements may also have consequences for the accommodation arrangements. It is not uncommon for SIL arrangements to break down for people with complex needs and behaviours, particularly given the proliferation of new businesses providing NDIS support services who may not have adequate experience working with complex clients. There is also an increased risk in terms of safeguarding if participants feel they cannot raise concerns about the SIL services for fear that their accommodation will be under threat.

Public Advocate and Public Trustee collaboration

The Public Advocate and the Public Trustee (PT) have a significant number of shared clients, namely, people under both guardianship and administration orders made by the South Australian Civil and Administrative Tribunal (SACAT). These shared customers include some of the most vulnerable people in the South Australian community. During 2020–21, the OPA and the PT strengthened processes for information sharing to deliver more coordinated services and to increase safeguarding of their shared clients. Specific initiatives implemented include:

- The OPA and the PT established regular meetings between staff at the executive and senior management levels to discuss strategic, operational and individual client matters.
- The OPA and the PT have jointly engaged with important stakeholders, particularly the NDIA and the regulator of NDIS services (NDIS Quality and Safeguards Commission). This has included a password authentication pilot project to streamline both organisations' contact with the NDIA.
- Improvements were made to processes for information sharing and escalation of critical incidents relating to shared clients.
- Coordination of staff education programs so that joint education sessions have been delivered on topics such as safeguarding clients.

Functions of the Office of the Public Advocate

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

Purpose and role

The Public Advocate is appointed under the *Guardianship and Administration Act 1993* to provide services that promote and protect the rights of people with a mental incapacity.

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

In fulfilling these statutory obligations, the Public Advocate also:

- reviews programs for mentally incapacitated persons and makes recommendations to the appropriate minister about unmet need or inappropriately met need;
- promotes the rights and interests of persons with a mental incapacity through systemic and individual advocacy;
- provides the community with information and advice related to mental health, guardianship and administration, advance care directives, legislation and related issues;
- acts as a guardian of last resort, and undertakes investigations as required by the South Australian Civil and Administrative Tribunal (SACAT); and
- provides effective dispute resolution to disagreements around advance care directives and consent to medical treatment.

Key services

The Office of the Public Advocate works with and on behalf of adults to provide the following services:

Guardianship (decision making)

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

Resolving and mediating (dispute resolution)

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*.

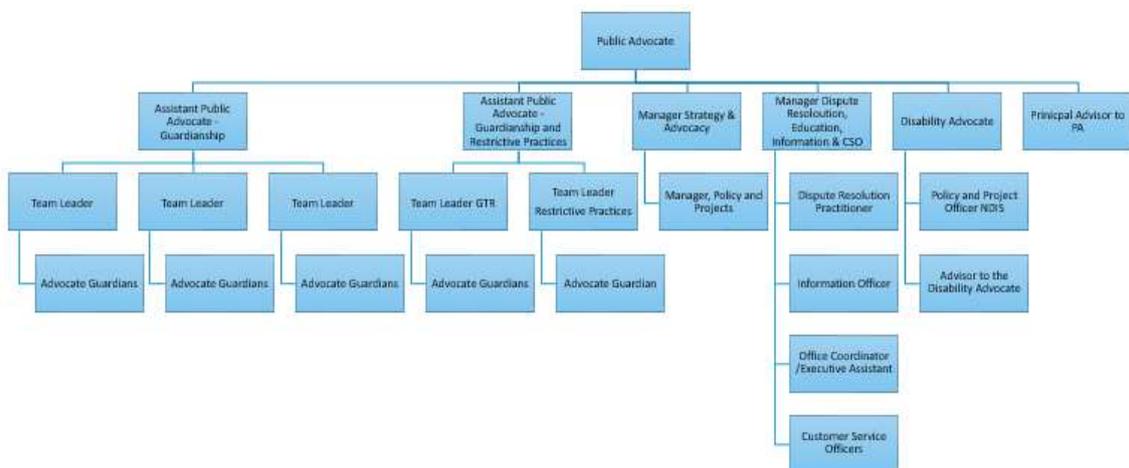
Informing and educating

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



Guardianship

The Public Advocate is appointed as a 'guardian of last resort' for a person who has impaired decision-making capacity (or mental incapacity under the Act) by the SACAT. The Public Advocate delegates the day-to-day decision-making responsibility to staff within the OPA. The person under guardianship is known under the *Guardianship and Administration Act 1993* as the 'protected person'.

Decisions may include:

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

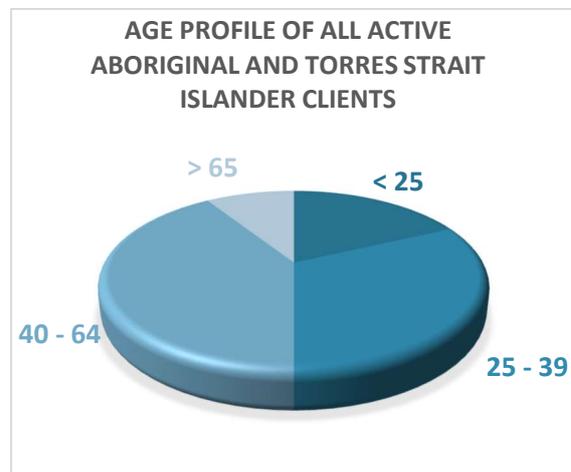
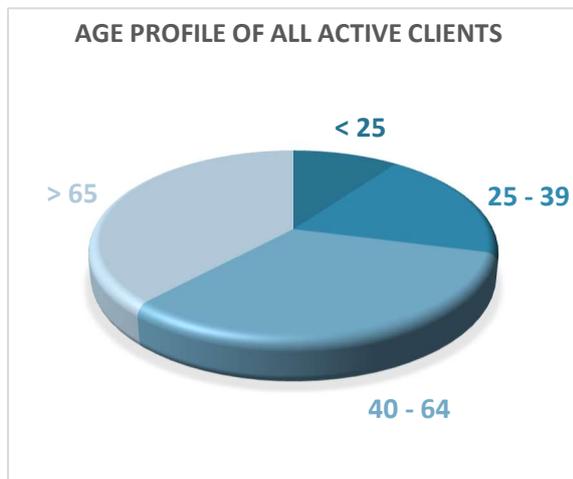
Profile of clients

On 30 June 2021, there were 1524 active clients under the guardianship of the Public Advocate.

In 2020–21, 56 per cent of guardianship clients were male and 44 per cent were female. For Aboriginal and Torres Strait Islander clients there was a higher proportion of male clients (62 per cent). Aboriginal and Torres Strait Islander clients under guardianship accounted for 9.3 per cent of all clients on 30 June 2021, which is 0.7 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).

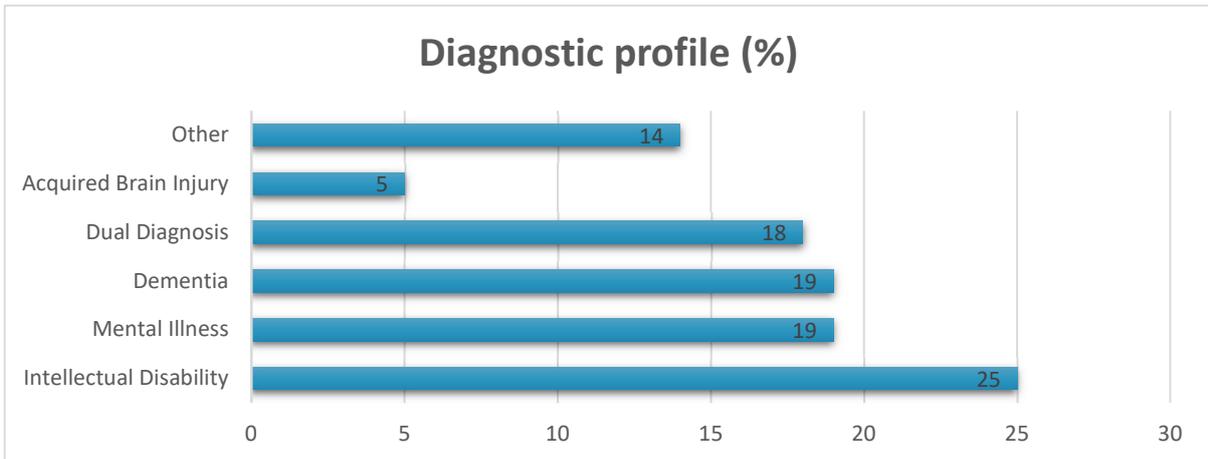
The age profile of guardianship clients indicates that approximately a third (33 per cent) of all clients are in the middle age group of 40 to 64 years and slightly more than a third (38 per cent) are over the age of 65 years. The age profile of Aboriginal and Torres Strait Islander clients shows a higher representation of younger clients aged between 25 and 39 years (32 per cent) and in the middle age group of 40 to 64 years (41 per cent).

There was a much lower representation of Aboriginal and Torres Strait Islander clients in the age group of over 65 years (9 per cent), reflecting the lower life expectancy of Aboriginal and Torres Strait Islander people.

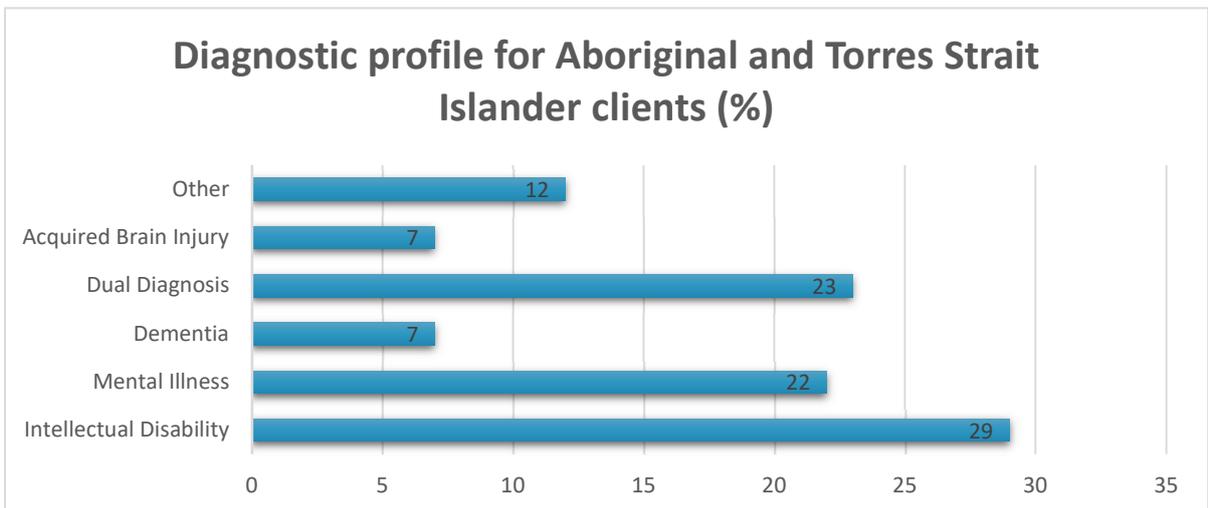


Client diagnostic profile

In 2020–21, people under guardianship with impaired decision-making capacity had conditions in the following areas: intellectual disability (25 per cent), mental illness (19 per cent), dementia (19 per cent), dual diagnosis (18 per cent), acquired brain injury (5 per cent) and other (14 per cent).



This is similar for Aboriginal and Torres Strait Islander clients, although intellectual disability, mental illness, dual diagnosis and acquired brain injury are slightly more prevalent for Aboriginal and Torres Strait Islander people under guardianship: intellectual disability (29 per cent), mental illness (22 per cent), dementia (7 per cent), dual diagnosis (23 per cent), acquired brain injury (7 per cent) and other (12 per cent).



Accommodation

On 30 June 2021, clients under the guardianship of the Public Advocate were residing in:

- disability-specific accommodation (30 per cent)
- residential aged care facility (26 per cent)
- public, private or community rental accommodation (15 per cent)
- their own home (5 per cent)
- family/partner's home or friend's home (5 per cent)
- supported residential facility (6 per cent)
- a forensic service or prison (2 per cent)
- a hospital or a rehabilitation centre (6 per cent)
- a mental health facility (4 per cent)
- no fixed place of abode (1 per cent).

Guardianship activity

Growth in guardianship

The Office of the Public Advocate has experienced a continued increase in the number of clients under guardianship over the past five years. The number of clients screened for potential guardianship appointment, new guardianship clients and the number of clients at the end of the financial years continue to grow.



Over the past five years, an average of 1433 South Australians have received guardianship services each year from the OPA, with 1817 receiving services in 2020–21.

Active matters

On 30 June 2021, the OPA had 1524 active guardianship matters. This was an increase of 233 (18 per cent) from the previous year.

Table 1: Active guardianship matters 2020–21

Guardianship	2016–17	2017–18	2018–19	2019–20	2020–21	↑/↓ since previous year
Active matters (year)	1219	1267	1323	1538	1817	↑ 18%
Active matters (30 June)	942	954	1056	1291	1524	↑ 18%

**There is a discrepancy of 2 files from 2019-20.*

**The figures include a small portion of files administratively opened and closed in error.*

**The figures include 3 files which are being used for system enhancement/testing purposes.*

New appointments

The Office of the Public Advocate attends initial SACAT hearings (screenings) of guardianship applications where the Public Advocate has been nominated as the potential guardian. In 2020–21 there were 700 applications for potential guardianship and the Public Advocate was appointed as guardian in 75 per cent of these cases, which is 528 South Australians with impaired decision-making capacity.

There was a significant increase in both guardianship applications and new guardianship appointments in 2020–21, 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 2020–21

Guardianship	2019–20	2020–21	% ↑/↓
SACAT hearings for guardianship applications	656	700	↑ 7%
New guardianship matters	482	528	↑ 10%

Closed matters

In 2020–21, 293 guardianship matters were closed, which represents 16 per cent of all guardianship matters for the year. This is equivalent to the 2019–20 rate, where the OPA also closed 16 per cent of matters.

Although closures this year and the last are similar to previous years, the OPA has experienced a greater need for ongoing guardianship appointments due to:

- the need to make decisions about, and undertake reviews of, NDIS services;
- 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] SASFC 58).

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.

The OPA seeks to revoke a guardianship order where it is considered 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.

Of the 293 guardianship matters that were closed in 2020–21, 62 matters (21 per cent) were in place for over three years. Guardianship matters were closed for the following reasons:

- order revoked (33 per cent)
- the death of the client (47 per cent)
- the appointment of a private guardian (19 per cent).

Table 3: Length of closed guardianship matters 2020–21

Length of guardianship matter	2019–20	2020–21
6 – < 12 months	123	149
1 year – < 2 years	38	54
2 – < 3 years	28	28
3+ years	58	62
Total closed matters	247	293

Decisions

The role of the Public Advocate is to make decisions for people with impaired decision-making capacity who are unable to make decisions for themselves. These decisions include accommodation, healthcare, lifestyle decisions, decisions about services and supports, and who may have access to the client.

In 2020–21 the breakdown of decisions made for clients under guardianship included five top decision categories:

- 2913 health
- 2562 lifestyle
- 2445 accommodation
- 1307 access
- 910 service/support.

Urgent decision making

The Office of the Public Advocate provides an after-hours 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. Most calls to this service are from health practitioners seeking urgent orders for consent for medical treatment for people under the guardianship of the Public Advocate.

In 2020–21, the OPA responded to 1086 after-hours calls, an increase of 25 calls (2 per cent) from the previous year, with a monthly average of 91 calls.

Similar to last year, the two peak periods continue to be 12:00 pm to 6:00 pm (weekends and public holidays), and 6:00 pm to 9:00 pm on weekdays.

Investigations

At times, the Public Advocate can be directed by the SACAT to investigate and provide a written report of findings in response to an application received by the tribunal. The aim of the report is to provide a balanced, concise overview of the circumstances of the person associated with the application.

OPA staff are responsible for investigations, which involve interviewing the person who is the subject of the investigation, as well as 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.

Investigation reports are presented at a SACAT hearing and considered along with other evidence. The OPA has experienced a decrease in the number of investigations that it has been directed to undertake in 2020–21 compared to the previous year.

Table 4: Investigations for the SACAT in 2020–21

Complaints/information requests	2019–20	2020–21	% ↑/↓
OPA investigations undertaken for the SACAT	38	29	↓ 24%

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 the Public Advocate as a Litigation Guardian to assist the person to instruct a lawyer.

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 eight new litigation files during 2020–21, six more than the previous year.

Table 5: Litigation guardianship 2020–21

Litigation Guardianship	2019–20	2020–21
Appointments	2	8

Complaints and decision reviews

In 2020–21, the OPA responded to 33 complaints/decision reviews, 25 ministerial enquiries and four Freedom of Information requests. These requests related to decisions made by the Office of the Public Advocate staff, communication concerns or other matters.

From the 1817 clients assisted in 2020–21, complaints and decision reviews equated to 2 per cent of clients. Ministerial requests equated to 1 per cent of clients, which is a decrease of 1 per cent from last year.

Table 5: Information requested 2020–21

Complaints/information requests	2019–20	2020–21
Complaints and decision reviews	12	33
Ministerial enquiries	32	25
Freedom of Information requests	5	4

Warrants

A warrant is a written authority by the SACAT to direct a person under section 69 of the *Guardianship and Administration Act 1993* to present to a psychiatric, psychological or medical professional for examination and assessment regarding their mental capacity and to submit a report to the SACAT. There were no applications for a warrant made in 2020–21.

Further information on guardianship

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

http://www.opa.sa.gov.au/resources/fact_sheets

Five-year data can be found at:

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

COVID-19 Emergency Response Act 2020

The *COVID-19 Emergency Response Act 2020* came into effect on 6 April 2020. Schedule 1 of the Act contained 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 are protected by ensuring that detention is the least restrictive alternative and subject to independent oversight and review.

The legislation enabled accommodation service providers to lawfully and urgently detain persons who were at risk of exposure to COVID-19 and/or non-compliant with public health guidance, for a short period, at their usual home. Accommodation service providers could then seek approval from a person's guardian (including the Public Advocate) to authorise detention for a period not exceeding 28 days. If there was no guardian appointed, an Authorising Officer (Adjunct Professor Richard Bruggemann was appointed to this role) or the South Australian Civil and Administrative Tribunal (SACAT) could approve the detention.

Any approval had to implement the least restrictive approach that balanced 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 (AO) and Public Advocate 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 was maintained as much as possible. The detention also had to comply with guidelines published by the Attorney-General.

Decisions to approve detention under schedule 1

During the Parafield Cluster event in November 2020, the Public Advocate approved the detention of four protected persons:

- Two residents were detained at their supported accommodation service after repeatedly attempting to leave their premises contrary to public health advice and a stay at home direction. The order for each resident expired. No further order was sought for either resident as the risk of exposure to COVID-19 had reduced.
- A resident of a supported accommodation service had a medical condition and had left her residence contrary to public health advice and a stay at home direction. Approval was granted to detain her at her residence. The order expired and no further order was sought as the risk of exposure to COVID-19 had reduced.
- A resident of an aged care facility had potentially been exposed to COVID-19 and the service provider was attempting to keep residents isolated in their rooms. Approval was

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granted to detain the resident at the premises. The order expired and no further order was sought as all residents were cleared of COVID-19 on testing.

The OPA has given close consideration to applications for detention and, in some cases, refused applications where detention was not necessary as the resident was complying with the health directions, or other orders or arrangements were already in place to appropriately manage the client's safety.

Decisions by the Authorising Officer (AO) under Schedule 1

The Authorising Officer authorised the detention of five people during the Parafield Cluster event (these were the first orders made by the AO under Schedule 1).

The orders related to five residents of an aged care facility who had potentially been exposed to COVID-19 from an infected carer. The service provider was attempting to keep the residents isolated in their rooms. Approval was granted to detain the residents at the premises.

The residents were not under guardianship, but the Authorising Officer was satisfied that the residents lacked capacity to understand what was required of them. The situation required an urgent response, and the Authorising Officer was able to ensure the service provider could act lawfully to protect the residents and others at the premises. The orders expired and no further orders were sought as all residents were cleared of COVID-19 on testing and the risk of exposure to COVID-19 in South Australia had reduced.

Expiry of the scheme

The powers under schedule 1 of the Act were due to expire in February 2021 but were extended to 31 May 2021. The scheme expired on that date.

Given the small number of applications received under the scheme, it is likely that any future applications for an urgent detention order related to COVID-19 can be managed within the SACAT's jurisdiction. However, the scheme was still an important initiative in response to the evolving COVID-19 situation, ensuring that protected persons (and the community) were kept safe, their rights protected and that they were protected from unlawful detention.

Education of service providers

The OPA contributed to the development of the COVID-19 Supported Independent Living Operational Response Plan, which included recommendations that service providers consider the need for restrictive practices and appropriate orders in the event of an outbreak. OPA staff have also spoken about the scheme at meetings with non-government accommodation service providers.

The AO identified communication and education of stakeholders as an area for ongoing work. The AO undertook education activities with stakeholders to raise awareness of the scheme. He engaged with:

- the SIL Expert Reference Group (with DHS)
- the National Disability Services Positive Behaviour community of interest
- a disability sector forum
- advocacy groups (South Australian Council on Intellectual Disability and Aged Rights Advocacy Service)
- NDIS Quality and Safeguards Commission
- a forum of rural mental health workers.

The AO also provided information/advice to individual service providers about the new legislation. The AO received positive feedback about the government's commitment to people with cognitive disabilities through putting this legislation in place. Providers are keen to ensure that they comply.

Visits by the Community Visitor Scheme under the COVID-19 Emergency Response (Community Visitor Scheme) Regulations 2020

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 and AO 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 Principal Community Visitor has conducted a visit with each of the service providers/premises who were authorised to detain people under the November 2020 orders. The CVS provided a report on the visits to the Public Advocate and the Authorising Officer (relevant to the orders each had made).

COVID-19 vaccinations

A key focus of early 2021 has been ensuring that Office of the Public Advocate clients under a Health Guardianship Order received the required consent for the administration of the COVID-19 vaccination. In accordance with the principles of the *Guardianship and Administration Act 1993*, consideration was given to the client's wishes, any existing arrangements, medical advice, and other relevant circumstances to ensure the proper care and protection of the client.

Phase 1a commenced in February 2021 and included OPA clients from aged care facilities, group homes, hospitals, mental health facilities, supported residential facilities, prisons and rehabilitation centres. Phase 1b commenced in April 2021 and ran concurrently with Phase 1a. Phase 1b included OPA clients within the following settings: own home, boarder/lodger, caravan park, family/partner's home, forensic service, friend's home, rental (not for profit, public and private) and clients with no fixed address.

On 30 June 2021 the OPA had provided 383 consents, approved 2 deferrals to consent at a later stage to give additional time for client/family consideration, and declined consent for 9 clients due to medical or personal reasons. The OPA continues to work with clients, families, facilities, providers, general practitioners and health authorities as part of the vaccine rollout.

Resolving and mediating



Dispute Resolution

The OPA Dispute Resolution Service (DRS) has legislative authority 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 with complex and conflictual situations.

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

1. if there is a dispute in relation to an advance care directive (ACD) that a person has made under the *Advance Care Directives Act 2013*;
2. if there is a dispute about consent to medical or dental treatment under the *Consent to Medical Treatment and Palliative Care Act 1995* – this includes disputes involving children under 16 years of age;
3. if there is a dispute about a decision(s), proposed decision(s), or decision maker(s) under both Acts.

An eligible person is any person who satisfies the Public Advocate that the person has a proper interest in a particular matter relating to the advance care directive or the consent to medical and/or dental treatment. The DRS receives applications for dispute resolution from a broad spectrum of the South Australian community including the SACAT, healthcare and medical practitioners (doctors, nurses and social workers), aged care facilities, service providers, government agencies, non-government agencies, and friends and family members.

The *Advance Care Directives Act 2013*

The *Advance Care Directives Act 2013* was enacted to enable a person over 18 years of age to make decisions and give directions in relation to their future healthcare, residential and accommodation arrangements, and personal lifestyle affairs. It also provides for the appointment of substitute decision-makers to make such decisions on behalf of the person if their decision-making capacity is impaired, to ensure that healthcare is delivered to the person in a manner consistent with their wishes and instructions and to facilitate the resolution of disputes relating to ACDs.

Review of the *Advance Care Directives Act 2013*

In 2019 Professor Wendy Lacey, Professor of Law, University of South Australia, was engaged by the South Australian Government to review the *Advance Care Directives Act 2013 (SA)*.

The terms of reference were to assess the extent to which the objects of the *Advance Care Directives Act 2013* were being achieved and to recommend changes to the legislation, administration, policy and practice which would improve the extent to which the objects are achieved. This involved public and other consultation and the OPA provided a submission.

The review made 29 recommendations. Of the 29 recommendations contained in the report the South Australian Government supported (in full or in principle) 22 of the recommendations. While the review did not note any fundamental issues with the operation of the Act, it did note the low uptake of ACDs in the community. The South Australian Government's response to the review noted that it was committed to increasing the uptake of ACDs and established a non-statutory oversight group to provide advice to the Minister for Health and Wellbeing on implementation of the recommendations.

The OPA was specifically mentioned in three recommendations and all three were supported by the South Australian Government. Of specific note is recommendation 16, which states that the ACD Act should be amended to require the OPA to discontinue a dispute resolution matter where a reasonable suspicion of abuse exists and instead refer the matter to the SACAT for determination; that the OPA should be entitled to disclose the basis of that referral to the SACAT; and that the OPA should publish on its website that evidence of abuse will trigger a discontinuation of mediation.

Recommendation 18 states that the declaratory power of the OPA pursuant to section 45(5) should be repealed. Section 45(5) states that the Public Advocate may upon application of an eligible person make a declaration in relation to a mediation matter. This has not been used because the SACAT has the power to address such issues. All three recommendations formed part of the OPA's submission to the review and are supported by the OPA.

Recommendation 3 states that non-statutory directives irrespective of their form or whether they appear in a statutory ACD should be treated as relevant and highly persuasive. The OPA supports the right of adults who are not able to make a legal document such as an advance care directive, due to impaired decision-making capacity, to be afforded the opportunity to have their views, values and wishes for future decision making recorded. The OPA has partnered with the SAHMRI and received an Information Linkages and Capacity Building grant to undertake a project³ to obtain and document OPA clients' wishes using a supported decision-making framework.

³ [Living My Life Project | Office of the Public Advocate \(opa.sa.gov.au\)](https://www.opa.sa.gov.au/living-my-life-project)

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The OPA is a member of the Advance Care Planning Oversight Group and is actively working on implementing the recommendations to strengthen and increase advance care planning in South Australia and to support the development of non-statutory directives completed by people who lack decision-making capacity.

Substitute Decision-Makers Toolkit Project

The OPA applied to the Office for Ageing Well (OAW) for a grant to develop a toolkit to provide clear information to substitute decision-makers (SDMs) under an advance care directive to improve their knowledge and understanding of their role. In particular, the aim is to provide a greater understanding of decision-making capacity; rights-based decision-making principles; self-determined, supported and substitute decision-making; and the obligations of SDMs. The grant of \$70,000 was offered on 4 June 2021 and the project will be funded for two years.

The OPA aims to deliver the following outcomes:

- improved community understanding and knowledge of the role of SDMs under an advance care directive;
- a toolkit to support SDMs in their role; and
- promotion of the SDM toolkit to targeted groups throughout South Australia via educational workshops.

Consent to Medical Treatment and Palliative Care Act 1995

In 2013 when the *Advance Care Directives Act* was enacted, amendments were made to the *Consent to Medical Treatment and Palliative Care Act 1995* (the Consent Act). These amendments included the OPA's legislative authority to resolve disputes related to consent to medical, dental and healthcare treatment.

A person cannot receive medical or dental treatment without consent. The Consent Act specifies who can consent to treatment for adults and children when a person cannot give their own consent including in medical emergencies. When a person is assessed as not being able to give consent for a particular treatment, then consent must be sought from a substitute decision-maker who can be a substitute decision-maker under an ACD or a 'person responsible' as defined by Section 14 of the Consent Act.

A 'person responsible' is defined in the Consent Act in the following hierarchical order:

- a guardian appointed by the SACAT to make healthcare decisions who is available and willing to make the decision;
- an adult domestic partner or 'prescribed relative' (adult related to the person by blood, marriage, adoption or Aboriginal kinship/marriage) with a close and continuing relationship with the person who is available and willing to make the decision;

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- an adult friend who has a close and continuing relationship with the person who is available and willing to make the decision;
- someone charged with the person’s ongoing day-to-day care and well-being (such as a Director of Care in aged or supported care) who is available and willing to make the decision (except for chemical restraint).

In many circumstances the Consent Act negates the need for the SACAT to make a guardianship order. The OPA Information and Education Service provides information and education to the community about the Consent Act to increase awareness of who can consent to healthcare/medical and dental treatment if an adult is not capable of consenting themselves.

DRS applications

Applications made to the DRS often involve conflict between family members in regard to decisions relating to a person with impaired decision-making capacity. In 2020–21 reasons for the applications included being prevented from visiting a loved one, disagreements about accommodation decisions, general concerns about the decisions being made by substitute decision-makers appointed under an ACD and disagreements about a decision and/or decisions amongst substitute decision-makers appointed under an ACD.

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

Table 6: DRS applications 2020–21

DRS applications	2020–21
Family and friends	42
Healthcare professionals	6
Service providers	2
Aged care facility	1
Adult Safeguarding Unit	3
Legal representative	1
Person themselves	1
Total applications	56

Referrals to DRS

Section 49 of the *Advance Care Directives Act* provides for the SACAT to refer a matter to the OPA DRS if the SACAT is of the opinion that it is more appropriate for the matter to be dealt with by the DRS. The regulations under the ACD Act set out the provisions for this process.

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In 2020–21 the SACAT referred to the OPA DRS on 11 occasions. This is an increase from 3 referrals in 2019–20.

The Adult Safeguarding Unit (ASU) also referred 3 matters to the DRS in 2020–21.

The OPA DRS seeks, where appropriate, to avoid the matter proceeding to the more formal SACAT process and potentially resulting in the revocation of a person’s substitute decision-maker/s role and the appointment of the Public Advocate as guardian.

Finalised matters

The DRS has developed a model of dispute resolution including mediation that is rights based and person centred, enabling participants who disagree to identify 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 7 indicates the outcome of all 44 matters finalised by the DRS during 2020–21. A total of 14 matters were still open on 30 June 2021.

Table 7: DRS finalised matters 2020–21

Finalised DRS matters	2019–20*	2020–21
Resolved	21	14
No further action	20	10
Referred to the SACAT	7	7
Referred to ASU	0	1
Withdrawn	8	10
Client deceased	1	2
Total	57	44

*Correction to the 2019–20 Annual Report: the number of closures reported for 2018–19 was 64 but should have stated 66. The breakdown was reported correctly; however, the total was incorrectly added up.

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There were 10 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 six formal mediations, assisting a total of 19 participants, four of these matters were resolved with a full mediated agreement. One reached partial agreement at mediation and an application was made to the SACAT to appoint a guardian to resolve the outstanding issues. The other was deemed inappropriate for mediation and the OPA referred the matter to the SACAT for resolution.

Preliminary assistance

Although mediation is a helpful tool for dispute resolution, there are many occasions where it is either not appropriate, not possible, or not necessary to reach a conclusion. At these times, the *Advance Care Directives Act* allows us to provide preliminary assistance to interested parties.

Section 45(1) states that the Public Advocate may, on application by an eligible person in respect of an advance care directive or on her own initiative, provide preliminary assistance in resolving a matter, including by:

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

The DRS has noted an increase in the number of matters being resolved under the category of 'preliminary assistance' under section 45(1). Of the 14 matters resolved, a total of eight cases (57 per cent) were resolved without attendance at a formal mediation process. 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 the parties to access options other than a SACAT application.

Case Study: preliminary assistance

Ms M had appointed two relatives as her substitute decision-makers before a diagnosis of Alzheimer's dementia presented a major challenge to her family. Concerned family members initially contacted the Adult Safeguarding Unit, who confirmed that the family conflict revolved around education and communication, rather than abuse, and referred the matter to the DRS.

The DRS contacted the substitute decision-makers and family members. Each conversation included information about the Section 10 principles of the ACD Act, and the family received detailed information about the role of the substitute decision-makers, as well as the SACAT process.

During this time, Ms M was placed permanently in an aged care facility. The SDMs and family were now all in agreement about this, and focused on Ms M's wishes, freedom and care needs. The DRS was able to guide the family towards arranging a schedule for Ms M's loved ones to visit her, as she settled into the facility well with their support.

To ensure that there were no loose ends the DRS contacted the facility and provided targeted education to the staff around decision making under an ACD. The DRS reassured them that they could contact the OPA should the family require any future assistance with decision making for Ms M.

This matter was resolved with ongoing individual support of the overwhelmed substitute decision-makers, as well as education of all the parties, and encouragement and guidance of the family toward decision making that honours Ms M's wishes and upholds the principles of the Act. Through these consistent efforts, the family were able to create secure arrangements within which to continue their very valued relationships with Ms M.

Conflict coaching

During the year the DRS has offered conflict coaching to individual interested parties as part of its dispute resolution toolkit. Conflict coaching involves assisting participants 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 outside of their own personal values and
- options for moving towards a preferred future.

Technology and the DRS

As a result of the need to work differently due to COVID-19, the DRS responded with a more flexible approach to its usual processes. The DRS offered video and telephone consultations and mediations for its clients. The DRS team has continued to make the most of available technology with an increase in clients accessing its services from interstate and overseas.

Case study: technology

In the case of Mr D, whose daughter was located in South Australia, and whose son was located in the United States, communication had become so challenging that a referral was made to the Dispute Resolution Service by the South Australian Civil and Administrative Tribunal to see if the siblings could come to an arrangement rather than revoke Mr D's advance care directive.

Mr D had made his ACD many years earlier, appointing his son, whilst the daughter who lived locally was helping to provide for his care needs. However, the difference between the siblings meant that they were receiving different health information from different sources, resulting in misunderstanding and conflict between them over time.

The key to resolution for Mr D and his family was to open up the lines of communication using video conferencing, and to focus on the wishes expressed in his ACD as a starting point for discussing their shared values – dad's happiness, a sufficient level of care, and minimising the conflict between his loved ones.

Mr D's family worked hard over several sessions to come to agreement about how information would be shared in the future, and to start to build new habits in their communication via phone and email. It was to their credit that Mr D was able to keep his ACD intact, with his appointed decision-maker in place, and his wishes for peace in his family upheld.

Experience over this period has highlighted 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. The DRS takes seriously the opportunities it has for modelling the language and behaviour of supported decision making and promoting positive outcomes for its clients and the people who care about them.

Elder mediation training

From May 2021, DRS staff participated in an extensive online training course with internationally respected mediator and trainer Dr Dale Bagshaw.

This tailored professional development program focused on the needs, experiences, conflicts and challenges facing older people, and their families, carers and communities, and the implications for mediation involving older people.

The main content of the course covered many theoretical issues such as ageing, family dynamics, ethics and culture, as well as practical topics such as working with large groups, screening for capacity and elder abuse, confidentiality, elder law and elder mediation practice skills.

The course also included a module facilitated by clinical neuropsychologist Dr Jane Lonie, who taught participants about capacity assessment and outlined a helpful framework for considering the capacity of older people as we encounter them.

Informing and educating



The provision of information and education to community members, health professionals and service providers is an important role of the Office of the Public Advocate. Areas covered by the information and education services included adult protection, the SACAT application process and information on decision-making capacity, guardianship and administration orders, and advance care directives.

Information is provided in three main ways:

1. the Office of the Public Advocate Telephone Information Service
2. face-to-face education sessions
3. the Office of the Public Advocate website: <http://www.opa.sa.gov.au/>

Fact sheets update

As part of the OPA's commitment to providing up-to-date and easy-to-understand information to the community, the project to update the complement of the OPA fact sheets was completed. The OPA fact sheets provide information to the South Australian community about the functions of the OPA, advance care directives, consent to medical treatment, guardianship, special powers, applications to the SACAT and the OPA's Dispute Resolution Service. The project reviewed the 19 fact sheets and re-wrote them in a simplified, easy-to-follow format, so that the answers to the most frequently asked questions are readily available. The fact sheets were published in August 2020.

Easy Read fact sheets

In 2020–21 the OPA converted all 19 OPA fact sheets to Easy Read format. Easy Read combines text with layout and imagery to simplify and explain information.

The aim of Easy Read is to give more people access to information and to present information for people who are not familiar with English, or who have low literacy or a learning disability. Easy Read's unique layout and style presents information so it is easy to understand.

The OPA engaged an expert in Easy Read to assist with this project, particularly with the design and connecting language and imagery. The Easy Read fact sheets are available on the OPA website.

Information service statistics

In 2020–21 the OPA recorded 2171 requests for information on a wide range of issues. The three most common requests for information related to: guardianship matters 353 (16 per

cent), administration matters 288 (13 per cent) and advanced care directives 262 (12 per cent).

Education sessions

The OPA delivers education to the community and external stakeholders about the *Guardianship and Administration Act 1993 (SA)*, the *Advance Care Directives Act 2013 (SA)* and the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*. This year the education service has seen a significant increase in requests for education sessions with an increased interest in the areas of advance care directives, supported and substitute decision making, and restrictive practices.

The OPA conducted a series of education sessions for second year and fourth year medical students from Flinders University. The sessions explored the legislation (for example, the Consent Act and the *Advance Care Directives Act*), and how it will be applied in their chosen field.

The OPA education team also provides education in collaboration with other agencies. This year the OPA delivered a presentation to social work students at the University of South Australia (Magill Campus) with the Adult Safeguarding Unit. Together with the SACAT, the OPA delivered a presentation at the grand rounds to doctors, social workers and nurses at the Lyell McEwen Hospital.

The OPA also delivered a series of education sessions to staff and families at Minda Incorporated. Many attendees found these sessions particularly helpful as they navigate decision making under informal arrangements for family members.

The education team also drew on the resources of the dedicated restrictive practices team, who provided specialised, up-to-date education to OPA stakeholders about restrictive practices.

In response to COVID, the DRS team has exercised flexibility in providing education services using the different technologies available. Delivering education via video conference has been a useful way of staying connected with the community and professional groups that rely on the OPA for information and assistance. This year the OPA delivered 8 online sessions and 5 via a combination of online and in person, resulting in an increase in participants after a decrease in 2019–20 due to COVID-19 limitations.

Table 9 provides an overall picture of education services for this year.

Table 9: Education service 2020–21

	2019–20	2020–21
Sessions requested	34	37
Sessions delivered	23	33
Participants	508	1011

New evaluation forms

The OPA education team developed new evaluation forms to capture data about the experiences of attendees at education sessions. The new evaluation forms will enable the OPA to continuously improve the education packages with the different expectations and needs of professionals and community members in mind.

Advocacy and promoting rights



The Public Advocate raises awareness of systemic issues that affect people with a mental incapacity/impaired decision-making capacity. 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 2020–21 the OPA continued to advocate for systemic improvements in the way that guardianship clients access disability services. One method of advocating was through the continuation of regular forums with key stakeholders.

In 2019–20 the OPA facilitated two regular stakeholder meetings, the OPA National Disability Insurance Agency (NDIA) Forum and the OPA Disability Forum where stakeholders from the NDIS Quality and Safeguards Commission, the DHS, the SACAT and the PT collaborated. In 2020–21 these forums were combined, bringing the NDIA and the NDIS Quality and Safeguards Commission (NDIS Commission) to the table at the OPA Disability Forum. This was a successful transition to one forum where a range of topics were discussed such as:

- the work of all stakeholders
- the use of restrictive practices and authorisation processes by the SACAT and the OPA as guardian
- the progression of the Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021
- supported decision making projects underway within both the DHS and the OPA
- COVID-19 updates including the implementation of the *COVID-19 Emergency Response Act 2020* and responses from stakeholders including the vaccination roll out.
- the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
- information sharing agreements/exchange between parties
- after-hours responses via Marathon Health
- the OPA/NDIA/PT Password Authentication Pilot Project
- housing and tenancy matters for OPA clients
- conflict of interest issues for the OPA when a single service provider provides housing, supports and support coordination for OPA clients in particular in thin markets.

National Disability Insurance Scheme (NDIS)

On 1 July 2019 the NDIS reached full implementation in South Australia. This resulted in substantial change to the provision of personal support through greater choice and control for people with disability. The Office of the Public Advocate had a critical role in supporting guardianship clients transitioning to the NDIS and ensuring that their NDIS plans provide adequately for any required services and supports.

As of 30 June 2021:

- A total of 942 clients (61 per cent) had an approved plan, comprising 872 clients under 65 years and 70 clients over 65 years.
- A small number of OPA clients (80 people) were not NDIS participants, either because they were new to the OPA or had access issues which OPA staff were investigating.

The OPA is also working closely with the DHS, the lead agency on the overarching data-sharing agreement between the NDIA and state government agencies. The agreement is due to be completed in 2021–22 and will enable the OPA to more efficiently identify which OPA clients are not yet NDIS participants.

The OPA continues to advocate for OPA clients for access to the NDIS and appropriate funding for supports and 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 and participated in regular NDIS-related meetings, stakeholder forums and workshops, including:

- OPA Disability Forum with the NDIA, the NDIS Quality and Safeguards Commission, the Public Trustee, SACAT and the DHS, chaired by 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
- NDIA Community Engagement fortnightly agency update.

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Issues raised	Outcomes achieved
<p>Risk of gaps in the market leading to participants with high and complex needs being unable to access a service.</p>	<p>Issue escalated to NDIA senior staff as the NDIA has the lead role as 'market steward'.</p>
<p>Exceptionally Complex Support Needs Pathway to provide a specialist support service for clients facing challenges such as mental health issues, incarceration or homelessness.</p>	<p>This NDIS 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.</p>
<p>The need for support during a crisis and after-hours issues, such as accommodation breakdown and homelessness.</p>	<p>In May 2020 the NDIA engaged a provider for the after-hours Exceptionally Complex Support Needs Program in South Australia to provide for NDIS participants who require an emergency after-hours response. Referrals to this service can only be made by approved referrers, including SA Health, SAPOL and SA Ambulance Service. The OPA is now an approved referrer to this service.</p>
<p>OPA staff have had difficulty speaking to the NDIA about participants who are OPA clients without providing personal information such as their own Medicare number. Once provided, the NDIA will only speak with the individual staff member. This is the result of the NDIA not having mechanisms for recognising an organisation as a nominee or contact for a participant.</p>	<p>The OPA is participating in the OPA/NDIA/PT Password Authentication Pilot Project with the NDIA and the Public Trustee. The project allows OPA and PT staff to speak directly to the NDIA about a participant using a unique and secure password. Processes are now in place in the OPA for SACAT orders to be sent to the NDIA and NDIS plans to be returned from the NDIA. This process appears to be working well.</p>
<p>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.</p>	<p>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 and the Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann Marie Smith, an NDIS participant, who died on 6 April 2020 by Alan Robertson in 2020.</p>

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<p>The OPA currently relies on the DHS to undertake all data matching with NDIS data in order to identify shared clients and analyse their NDIS status.</p>	<p>A data-sharing agreement between the NDIA and state government agencies is being developed and will allow for more timely and accurate data exchange.</p>
<p>The lack of specialist disability accommodation for OPA clients within the overarching 100 Homes Project for people living with disability, especially the 31 homes for people with psychosocial disability and high and complex needs.</p>	<p>A number of meetings have been held with stakeholders in the NDIA to endeavour to address this issue for the participants of the 31 Homes Project. A total of 24 of the 31 people are OPA clients. Of the OPA clients:</p> <ul style="list-style-type: none">• 16 have transitioned to 31 Homes properties• 3 clients have transitioned to alternative accommodation• 5 clients are currently in the process of transitioning.

Disability Advocate

Dr David Caudrey was appointed as the Disability Advocate for South Australia in November 2018 for an initial period of one year. He has subsequently been extended in this role and in 2020, following the recommendations of the Safeguarding Task Force, the government committed funding for the Disability Advocate for a further three years until June 2023.



The Disability Advocate is located within the Office of the Public Advocate. The location of this role within the OPA maintains a separation from service provision and fits well with the functions of the Public Advocate. The Disability Advocate reports to the Minister for Human Services.

The role of the Disability Advocate involves:

- hearing from NDIS participants and their families about their experiences of the NDIS;
- advocating so that South Australians with a disability get the best deal from the NDIS; and
- leading projects at the request of the state government.

In 2020–21 COVID-19 impacted on the ability to meet face to face with people with disability and their families. Despite this, the Disability Advocate and his small team managed to engage with approximately 340 individuals and groups to discuss a range of matters relating to the NDIS in South Australia, including through online meetings and telephone calls. It should be noted that some of these meetings also related to the work of the Safeguarding Task Force.

Safeguarding Task Force

Following the tragic circumstances surrounding the death of Ms Ann Marie Smith (an NDIS participant living in South Australia), the Disability Advocate was asked to co-chair the Safeguarding Task Force with disability rights advocate Ms Kelly Vincent. The Task Force membership comprised people with disability, service providers and state government officials and was tasked with examining gaps in safeguarding for people with disability in South Australia.

The Safeguarding Task Force members met on four occasions, including a special meeting only for members with lived experience of disability. The co-chairs met with a range of people to seek their views around safeguarding people with disability. The Task Force also received several submissions. These meetings and submissions assisted the Task Force in identifying 14 gaps and making seven recommendations. These are detailed in the

Safeguarding Task Force Supplementary Report (September 2020) which can be found on the [Disability Advocate page⁴](#) of the OPA website.

The state government has progressed a number of the recommendations including:

- bringing forward the extension of the scope of the Adult Safeguarding Unit to include vulnerable adults who are NDIS participants over 18 years of age as of 1 October 2020
- investing \$400,000 a year in individual advocacy to improve the capacity to assist individuals to access what they need from the NDIS and from the community
- additional funding to continue the work of the Disability Advocate.

Office of the Public Advocate clients' experience of the NDIS

In February 2021 the Public Advocate asked the Disability Advocate to undertake a project to examine OPA clients' experience of the NDIS. This project aimed to explore whether OPA clients are benefiting from the NDIS, are experiencing any challenges and what impact the NDIS is having on the functioning of the Office of the Public Advocate. The Disability Advocate undertook one-on-one interviews with each of the OPA delegated guardians to inform the project.

The interim findings were:

- Overall, OPA clients are getting a good deal from the NDIS. There is more funding in the sector than ever before.
- The NDIS is so complex that people with a mild disability are sometimes seeking OPA guardianship to assist them to navigate the system. This is both disempowering to the individual and a significant stress on the workload of the OPA.
- The OPA has seen applications made to the SACAT for guardianship orders purely to help the protected person and their family navigate the NDIS.
- In the absence of a case management role, there is no overall person with responsibility for ensuring that the participant gets the services and supports they need. Support coordination may be the closest possible role in the NDIS to meet this need, but this is time limited and quantity limited, and funding is not always available to assist in addressing a crisis for the participant.
- In the absence of a person with overall responsibility (or case management), OPA guardianship staff often take on this role by default, despite it falling outside of their traditional remit.
- The advent of the NDIS has resulted in a significant increase in administrative tasks for OPA guardianship staff, such as reviewing service agreements, behaviour support plans, restrictive practices, etc.

⁴ [Disability Advocate | Office of the Public Advocate \(opa.sa.gov.au\)](#)

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- An increase in NDIS funding has seen growth in the disability sector with new providers entering the market. The market is still immature, and the skills and quality of service providers and support coordinators vary.
- OPA delegated guardianship staff at times find themselves directing support coordinators (SC). There is no minimum qualification for an SC.
- OPA clients can have some of the most complex and challenging support requirements. In a market-driven sector, service providers and support coordinators can choose whom they work with and on occasions they have opted to no longer work with an OPA client due to their complexity.
- The NDIS is not as flexible as participants' lives and, as a result, is not as responsive as it needs to be when there are changes in a person's life.
- There is no service provider of last resort. Often OPA clients find themselves in inappropriate settings such as social admissions to hospital to avoid homelessness.
- There are also challenges in finding appropriate housing. This compounds the problem that the NDIA often cannot respond to a crisis in a timely manner.
- There is market thin-ness in particular areas such as regional and remote areas. This means that there is little or no choice of service provider in those places.
- As a safeguard, the OPA endeavours to separate the provision of housing and support, and support coordination. In some instances, this is not possible and the OPA has to consent to a non-preferred option to prevent the person from being homeless.

Disability Advocate reports and submissions

In late 2020 and early 2021 the Disability Advocate held focused consultations with Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse (CALD) backgrounds and people involved in corrections, youth justice and child protection. Each of these cohorts identified very specific challenges. Reports relating to the experiences of CALD people, Aboriginal and Torres Strait Islander people and children are all available on the [Disability Advocate page](#) of the OPA website.

As noted in the 2019–20 Annual Report, people generally agree that the NDIS greatly benefits those who can access and take full advantage of the NDIS. For those people who fall outside of this cohort there are significant challenges.

Overall feedback is that there continue to be challenges for people engaging with the NDIS related to system design, responsiveness and customer service. Not having a clear contact or go-to person to help people navigate the NDIS or when problems arise remains a key shortcoming of the NDIS.

The Disability Advocate undertook an exercise to identify the range of roles a person with disability encounters during their interactions relating to the NDIS. This is demonstrated in 'Cast of Players' available on the [Disability Advocate page](#) of the OPA website.

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The Safeguarding Task Force also identified that there are several gaps that need to be addressed to safeguard vulnerable people. The NDIS, the NDIS Quality and Safeguards Commission and the state government only go so far in this safeguarding and further work is required.

In the last year the Disability Advocate has written joint submissions with the Public Advocate on a range of topics including:

- NDIS access and eligibility
- the Disability Royal Commission – safeguards and quality
- new rules about restrictive practices in South Australia (amendments to the *Disability Inclusion Act 2018*) – response
- Evidence (Vulnerable Witnesses) Amendment Bill 2020 – response
- proposed changes to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act) – response
- DHS COVID-19 Supported Independent Living Operational Response Plan – response
- NDIS Support Coordination Review.

The Disability Advocate will continue to pursue systemic issues with the NDIS for South Australians. The changes and challenges presented by the implementation of the NDIS have had a direct impact on the number of orders made by the SACAT appointing the Public Advocate as the guardian for persons with impaired decision-making capacity. The NDIS is built on the concept of the person with a disability exercising choice and control over their lives and, as a result, there is an inevitable increased workload for whoever is making decisions for a person with impaired capacity. This can put strain on family members and lead them to withdraw as either informal or formal decision makers, leaving the SACAT of necessity to appoint the Public Advocate to this role. There is also a concomitant increase in workload for the OPA in dealing with the administrative requirements of the NDIA.

NDIS Quality and Safeguards Commission

The regulator of registered NDIS service providers, the NDIS Quality and Safeguards Commission (the NDIS Commission), marked two years of operation in South Australia on 1 July 2020. The OPA has actively engaged with the NDIS Commission, particularly in relation to behaviour support and restrictive practices as well as strengthening relationships, in the areas of complaints, reportable incidents and compliance.

Unmet need in disability services

1. Appropriate supported accommodation options

The lack of suitable housing and accommodation options for people with impaired decision-making capacity under guardianship has been previously highlighted by the OPA in its advocacy activities. This gap in services for clients with disability leads to heightened risks of violence, abuse, neglect and exploitation in circumstances where they cannot access safe or appropriate accommodation in a timely way. The shortage of appropriate supported accommodation options continues to grow and has resulted in an increasing number of OPA clients with disability spending extended periods of time in hospitals or other inappropriate accommodation including hotels. The issue is systemic, places vulnerable South Australians with impaired decision-making capacity at increased risk of homelessness and is exacerbated by a number of contributing factors which are discussed below.

2. Locating affordable and appropriate housing

The process of locating affordable and appropriate housing for people with impaired decision-making capacity involves a range of NDIS processes. NDIS plans must include a goal related to home and living supports and must be supported by assessments, increasing forms of evidence and subsequent approvals where applications for supported independent living (SIL) and specialist disability accommodation (SDA) are involved. The application and approval processes are sequential rather than concurrent and commonly result in lengthy wait times that can take months. Review and appeal processes result in additional delays and many short-term and medium-term housing and accommodation options will not be approved by the NDIA unless a longer-term accommodation option has also been identified.

3. Exceptional clients with high needs and increased complexity

The OPA continues to be appointed the guardian of last resort for clients with some of the most complex and high needs in the community. Increasing numbers of OPA clients require individualised, tailored and customised housing solutions that do not exist in the current market-based choice-oriented structure. Many OPA clients who present with high needs, dual diagnosis, complex psychosocial disabilities and complicated behaviours are not funded for higher levels of housing and accommodation support. This is resulting in increasing rates of housing eviction, placement breakdown, withdrawal of accommodation and independent living supports, social admissions to hospital, risk of homelessness and entry into the criminal justice system. Providers offering accommodation and support services to clients with the most complex needs are significantly limited, which in some cases results in staff with limited skills delivering under-funded levels of service to some of the most complex and high-risk clients in the state.

4. Lack of crisis response and clear escalation pathways

Under current arrangements, there is no quick response or pathway to safeguard an NDIS participant if their support services or housing break down or fail. Escalation pathways do not provide same-day responses and after-hours crisis pathways do not currently result in locating alternative accommodation and support outcomes for vulnerable clients. Crisis options remain inadequate and are limited to acute hospital settings and other unsuitable arrangements including hotels. A more responsive crisis pathway is urgently required to safeguard vulnerable clients in crisis or in urgent need of temporary and crisis accommodation.

5. Need for a provider of last resort

There has been a significant increase in funding into the disability sector since the commencement of the NDIS. This has resulted in the rapid expansion of existing service providers and a growth in new providers entering the market. In the current market, a service provider can choose whom they want to provide services to. Many OPA clients require highly specialised support and have significant funding packages through the NDIS. Some service providers may agree to take on clients with complex needs and later withdraw services when they are unable to adequately provide the specialised support the person requires. For some OPA clients this failure of support results in cycling through service providers and supports, which can be disruptive and destabilising for them. When services are withdrawn for clients with complex needs, it is difficult to source a substitute provider at short notice and this highlights the need for a provider of last resort. This indicates a need for services and providers that will not cease their support or accommodation for a person who has high and complex needs. A provider of 'last resort' is required in this context and this should be an accommodation or support service provider that can step in when the market fails to provide the required services.

6. Shortage of trained and experienced disability support workers

OPA staff face significant challenges in finding services with suitably trained and experienced staff to work with clients with complex psychosocial disabilities and impaired decision-making capacity. Historically, there have been challenges in attracting and retaining skilled staff in the disability workforce. This has been compounded by the rapid growth in the disability sector since the commencement of the NDIS. Due to the market-based approach, there is not a 'one stop shop' for accommodation for participants with high and complex needs and locating the right accommodation in the right place can be a lengthy process. The knowledge base of the various market providers varies significantly, and specialist/support coordinator services are not always well versed in locating housing or providing the higher level of evidence that is needed to support individualised, tailored and specialised accommodation and supports. This results in a preventable gap in meeting the complex care and support needs of this vulnerable population and client group.

Addressing unmet need in the disability sector

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

1. a greater supply of housing, accommodation and supported independent living options for people with disabilities including psychosocial disabilities, with a particular focus on those under guardianship with complex needs
2. state-based advocacy to the NDIS for SIL and SDA funding and levels of support for vulnerable adults with impaired decision-making capacity who are not eligible for higher levels of housing and accommodation support
3. establishment of a 'provider of last resort' response to address the current market failure for highly vulnerable and at-risk adults with impaired decision-making capacity
4. establishment of responsive crisis pathways and gateway services to safeguard vulnerable clients who are in urgent need of crisis, temporary and immediate-term accommodation
5. greater supply of suitably trained providers and support specialists who are experienced with the care and support needs of vulnerable adults with impaired decision-making capacity, and who present with complex needs, dual diagnosis, complex psychosocial disabilities and complex behaviours
6. a 'matching' mechanism for demand and supply of supported disability accommodation such as a supported accommodation register in South Australia
7. education of specialist and support coordinators regarding housing options via market stewardship.

Unmet need in mental health

The key issues for the OPA's guardianship and advocacy functions in the area of mental health in 2020–21 were the transition of people with psychosocial disability to the NDIS and the availability of appropriate supported housing options for people with impaired decision-making capacity and mental health needs.

1. Psychosocial disability transition to NDIS

In South Australia, people with psychosocial disability – which means disability which arises from a mental health condition – were due to transition to the NDIS by 30 June 2019; however this has not been fully completed. In general, South Australians with psychosocial disability are entering the NDIS at a slower rate than others across the country.

There can be particular obstacles for people with psychosocial disability entering the NDIS. These include, at times, challenges in initiating and maintaining engagement with the NDIS access process, but also the intersection between health and disability for people living with psychosocial disability. The OPA continues to work closely with mental health services to assist in ensuring that all people who are eligible for support under the NDIS are able to access it.

During 2020–21, the OPA continued to participate in the South Australian NDIS Psychosocial Taskforce, led by the Office of the Chief Psychiatrist, which brings together important stakeholders to drive the increased participation of people with psychosocial disability in the NDIS.

On 30 June 2020 there were 1740 South Australians with psychosocial disability participating in the NDIS. By the end of quarter three of 2020–21, that number had increased to 2393. This represents less than 50 per cent of people with this type of disability who may be eligible for NDIS support (based on the Productivity Commission's estimate that 4800 people in South Australia with psychosocial disability would be eligible for the NDIS).

At 30 June 2021, people with psychosocial disability represented 11 per cent of the total number of NDIS participants in South Australia. The majority of people under the Public Advocate's guardianship with a primary diagnosis of mental illness or psychosocial disability have now transitioned to the NDIS as the OPA has considered this to be a priority for its clients.

2. Housing

The scarcity of appropriate supported housing options for people with impaired decision-making capacity and mental health needs remains a significant issue, as it is for people with complex needs and disabilities generally. This can lead to people with mental health conditions staying in inpatient settings, forensic health services and sometimes in prison for inappropriately long periods.

Under the South Australian government's '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. This resulted in the 31 Homes Project which enabled a number of the OPA's clients to transition from inpatient settings into the community with appropriate support. However, there remains a significant number of the OPA's clients with psychosocial disability and complex presentations who may spend periods of time in hospital due to breakdown of accommodation, who would benefit from a similar model of support.

Supported residential facilities (SRFs) continue to be one of the only other community-based supported housing options for people with mental health needs. The SRF sector is an important housing option for OPA guardianship clients. However, this type of accommodation, which is usually of a congregate living nature including shared rooms in some circumstances, is often unsuitable for people who need high levels of support and supervision or who have otherwise complex mental health needs.

The NDIS has announced its intention to ensure the transition of all people under the age of 65 living in residential aged care into more age-appropriate accommodation by 2025 where possible, as there may still be a small portion of clients who do not wish to transition or are housed in this setting due to market thinness. This is a welcome and important initiative. However, of the OPA's clients who are younger people in residential aged care (YPIRAC), approximately 50 per cent are people with psychosocial disability in addition to other complex needs. While that number is relatively small, it may reflect the broader picture of the YPIRAC population in South Australia, highlighting the difficulty in finding suitable accommodation for people living with complex mental health needs.

The issue of appropriate accommodation is not limited to younger people but can also be an issue for people ageing with complex mental health conditions. In June 2018, the Oakden Oversight Committee's Model of Care Expert Working Group (the EWG) described older people with severe and enduring mental illness as 'a disadvantaged and vulnerable cohort within the South Australian community, for whom adequate choices and viable options are not currently available'.⁵ The EWG indicated that a key problem for older people in South Australia with severe and enduring mental illness was insufficient supported housing

⁵ SA Health, The 'Oakden Report' Response, *Older Person's Mental Health Service – Models of Care Expert Working Group Report*, p. 44.

resources and that available models such as the Housing and Support Partnership (HASP) program focused on younger people while older people were referred to mainstream residential aged care.⁶

The EWG made recommendations about strengthening partnerships between state and Commonwealth government health and aged care services, to better provide services for older people with enduring mental health conditions in the community and mainstream residential aged care. The EWG also recommended the development of specialist residential units for older people with severe and enduring mental health conditions in both regional and metropolitan South Australia. In the OPA's experience, this continues to be an area of unmet need. The OPA has a number of clients with severe and enduring mental illness whose needs cannot be fully met in mainstream aged care, or in dementia-specific neuro-behavioural units. The OPA acknowledges current facilities such as the Neuro-Behavioural Unit at Northgate, the Repat Neuro-Behavioural Unit and the Specialised Advanced Dementia Unit; however further supply is required to meet the demand for this service.

Addressing unmet need in the mental health sector

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

1. enhanced information sharing between state and Commonwealth government agencies to assist individuals to transition to the NDIS
2. greater use of supported decision making for people with psychosocial disability in order to assist them to access services which accord with their will and preferences
3. continuation of the inter-agency work on service connections and housing, bringing together stakeholders from SA Health, the SA Housing Authority, the OPA and the NDIA
4. development of a broad range of accommodation options that includes specialist accommodation for younger and older people with severe mental illness.

⁶ Ibid, p. 44.

Aged care

Aged Care Royal Commission and restrictive practices

In 2020–21, the completion of the Aged Care Royal Commission was the prevalent issue for people receiving aged care, given its broad and detailed inquiry into the aged care system. The Aged Care Royal Commission identified significant areas for reform in the aged care sector, including stronger regulation of aged care and its workforce and the need to urgently provide home care packages to people who have been assessed as needing them.

The final report of the Aged Care Royal Commission made 148 recommendations which included the need for extensive systemic reforms, and a new *Aged Care Act*, including to provide stronger regulation and governance whilst also giving service users greater choice and control. Importantly, the Royal Commission made many recommendations in relation to the aged care workforce, including calling for registration as well as better training and higher pay for workers. Restrictive practices, and particularly the prevalence of chemical restraint, was another area identified as being in need of reform.

The Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021 was introduced into the Commonwealth Parliament on 27 May 2021, and was passed on 24 June 2021. The Explanatory Memorandum to the Bill described it as the first stage of aged care reform in response to the Aged Care Royal Commission's final report. The Bill has made amendments to Commonwealth aged care legislation, particularly in the area of restrictive practices, and the changes commenced on 1 July 2021. The new laws create stronger obligations on residential aged care providers to ensure that restrictive practices are only used as a last resort, are recommended by a health practitioner or behaviour support specialist and are documented, and that informed consent is obtained.

New specialist units in South Australia

From a South Australian perspective, there were developments in the area of specialist support for people with the most severe and extreme behavioural and psychological symptoms of dementia. The need for services such as those provided in Northgate House in northern Adelaide was identified as part of the Oakden Oversight Committee review of older people's mental health services and will assist in meeting the needs of people with very complex presentation.

The Neuro-Behavioural Unit (NBU) at the Repat Health Precinct in southern Adelaide opened in February 2021. The unit provides care for people with dementia whose needs and behaviours are complex. This is a highly specialised service providing 18 care places for people living with dementia who experience very severe to extreme behaviours associated with behavioural and psychological symptoms of dementia. The care places are divided into 3 pods with 6 consumers in each (currently 12 places of care are open). People stay in the Repat NBU until their symptoms improve and they no longer need the specialist care

offered by the service. People may then transfer to a residential aged care facility or specialist dementia care unit.

The Specialised Advanced Dementia Unit at the Repat was opened in late 2020 and cares for patients with complex dementia. The service was developed using the latest evidence and consumer input and is based on a small house model, with 2 pods of 6 beds each, incorporating dementia-enabling principles in a nurturing home-like environment to support and empower people living with dementia to live life as independently as possible. The Specialised Advanced Dementia Unit will form part of the excellence in dementia care provided on the Repat site, surrounded by providers such as Hammond Care's dementia village, community dementia services and links with universities. Some key features and benefits of the new 12-bed acute dementia specialist facility include supported way-finding, single rooms, continuous paths of movement, on-ward commercial kitchen, specialised sensory rooms, open spaces, gardens, acoustic panelling and a home-like aesthetic.

On 18 June 2021 the Public Advocate visited these sites, and the models of care are of a very high standard and welcoming. Further supply will assist with meeting unmet need in the future.

Unmet need in aged care

1. Restrictive practices

The OPA has previously identified that proper regulation of restrictive practices and the need to adopt the use of positive behaviour support assessments and plans was resulting in unmet need for people with impaired decision-making capacity receiving aged care services. The use of restrictive practices in aged care is clearly an area that is undergoing significant reform at the Commonwealth Government level. This includes the preparation of high-quality behaviour support plans for people receiving aged care services. As a result there are reforms planned to be introduced in July 2021 pursuant to the recently approved *Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021*.

In South Australia, legislation has been enacted to change and improve the process of authorisation of restrictive practices for NDIS participants. Whilst there is no legislation in South Australia which applies to authorisation of restrictive practices in aged care, there will be two separate systems operating in effect in South Australia depending on what type of Commonwealth funded care people are receiving.

2. Receiving necessary care at home

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

The OPA has reported for consecutive years that the delay in receipt of home care packages can sometimes lead to people having to enter residential aged care prematurely, and often against their wishes, because it is not safe to remain or return home without a home care package. In these situations, the OPA often has to consent to a residential aged care placement as the next most appropriate option to ensure that the person is properly cared for and supported.

Recommendation 39 of the Aged Care Royal Commission stated that people should be able to 'age in place' more readily by clearing the home care package waiting list. The Royal Commission recommended that this be achieved by immediately increasing the availability of home care packages and providing a package to all people currently on the waiting list at the level that they have been approved, and to keep the list clear by allocating packages to new entrants within one month of the date of their assessment.

3. End of life and palliative care

In 2020–21, the OPA provided feedback to the Palliative Care Experience Survey, developed by the Commission on Excellence and Innovation in Health to inform the development of a Statewide Palliative Care Services Plan 2021–2026. The OPA took this as an opportunity to reflect on its experiences in this area, particularly in its unique role as guardian for many people with impaired decision-making capacity who reach the end of life and who may require palliative care.

The OPA has found that, generally, medical professionals at treating hospitals are careful to consult with the OPA (as guardian) on behalf of patients in end-of-life or palliative care planning. This includes supporting requests from the OPA to obtain a second opinion in some cases. However, at times decisions can be made without attempts to consult or communicate with the patient and consider their wishes, particularly if there is no formal advance care directive in place.

To ensure clients play an active part in considering or influencing end-of-life care planning and transition to palliative care, medical and palliative care teams should consult with and seek the views of patients and their substitute decision-maker/s (under guardianship orders, advance care directives or 'persons responsible' under the *Consent to Medical Treatment and Palliative Care Act 1995*) before any change is made to the end-of-life plan, 7 Step Pathway or provision of care.

The OPA submitted that end-of-life planning should incorporate the following:

- effective communication between medical teams, disability/aged care providers and guardians/decision-makers;
- clear and consistent understanding and recording of reasons for change of care or transition to palliative care;

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- decisions that take into account patient wishes wherever possible and consultation with guardians/decision-makers to ensure this occurs
- the belief that quality of life is unique to a person and that decisions should not be based on assumptions related to a disability diagnosis.

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. greater alignment of the regulation and authorisation of restrictive practices for people receiving aged care and NDIS services
2. amendments to South Australian legislation on the authorisation of restrictive practices in aged care, so that it aligns with the new South Australian legislation governing restrictive practices for NDIS participants
3. market expansion in the areas of suitably trained positive behaviour support specialists who have training/expertise in dementia and the needs of older people
4. adoption at the Commonwealth level of recommendation 39 of the Aged Care Royal Commission, to provide prompt access to home care packages for people who need them
5. recognition, greater use and funding for the role of supported decision making in assisting older people to access services and plan for their future care that accord with their wishes and preferences
6. ongoing supply of specialist dementia care services such as those at the Repat site, the Specialised Advanced Dementia Unit and the Neuro-Behavioural Unit

Safeguarding adults

Adult Safeguarding Unit

The *Office for the Ageing (Adult Safeguarding) Amendment Act 2018* establishes an Adult Safeguarding Unit (ASU) within the Office for Ageing Well, SA Health. The ASU is responsible for: receiving, assessing and investigating reports related to the suspected abuse of vulnerable adults; referring matters to other organisations, as appropriate; coordinating multi-agency, multidisciplinary responses to support vulnerable adults in response to reports of suspected abuse, including appropriate follow up; and collating data and providing advice to the minister and others. The unit is guided by a Charter of the Rights and Freedoms of Vulnerable Adults, developed to ensure a human rights-based approach to providing safeguarding support, tailored to the needs and wishes of people experiencing abuse or neglect.

The Adult Safeguarding Advisory Group meets three times a year and has responsibility for promoting and advocating for the rights and interests of vulnerable adults, promoting their participation in decisions that affect them, and promoting prevention and early intervention strategies. The OPA is represented on the Advisory Group. The Office for Ageing Well retains policy responsibility for the Strategy to Safeguard the Rights of Older South Australians and the associated action plan, including elder abuse prevention and awareness raising.

The OPA is also represented on the Interagency Phone Line and Adult Safeguarding Unit Implementation Workgroup. This group meets every three months and provides a forum for the Office for Ageing Well and key external service providers to engage regarding the Abuse Prevention Phone Line and referral pathways. The group also provides advice on the development of processes to operationalise the ASU to optimise safeguarding outcomes.

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

The service assists vulnerable persons aged 65 years or over, or 50 years and over for Aboriginal and Torres Strait Islander people, and adults over the age of 18 years with a disability who are NDIS participants. From 1 October 2022, it will assist any adult vulnerable to abuse, regardless of age.

Alliance for the Prevention of Elder Abuse (APEA)

The OPA, the Public Trustee (PT), Legal Services Commission, South Australian Police and Aged Rights Advocacy Service 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 produced publications including *Safeguard your Finances*, *Appointing an Enduring Power of Attorney*, *The Duties and Responsibilities of Your Enduring Power of Attorney*, *Appointing a Substitute Decision Maker*, *Duties and Responsibilities of Substitute Decision Makers*, *Witnessing Documents* 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

National Disability Insurance Scheme (NDIS) Mainstream Capacity Building funded project Living My Life.

The South Australian Health and Medical Research Institute (SAHMRI) and the OPA were successful in obtaining an NDIS grant for \$1.28 million to undertake a 'Living My Life' project. The aim is to document OPA clients' wishes using supported decision-making practices/principles and the Living My Life documents.

This project has been funded by the Commonwealth Community Grants Hub, on behalf of the National Disability Insurance Agency (Mainstream Capacity Building Program). SAHMRI partnered with the OPA and the South Australian Department of Health and Wellbeing (DHW). The participants include persons under the guardianship of the Public Advocate who have disability including impaired decision-making ability and their family and carers.

This project has three components:

1. To build the capacity of OPA clients to assist them to express their life choices/goals/wishes, including future healthcare wishes, using supported decision-making practices. A newly developed *Living My Life* whole-of-life planning tool will be developed to document client wishes/choices/life goals. *Living My Life* is not a legal document but is based on the principles of the *Advance Care Directives Act*.
2. To provide access for participants and their support network (families, workers and carers) to the SAHMRI Wellbeing and Resilience *Be Well* Training. The purpose of this training is to build the capacity of the participants to better support the person with a disability to exercise choice and control, including access to mainstream health services, in accordance with the principles of the NDIS.
3. To enhance the supported decision-making practice framework within public health services including the utilisation of the My Health Information form (developed by SA Health & Wellbeing). This is in the context of the importance placed in hospital settings on patients as partners in their own care, to the extent they choose (National Safety and Quality Health Service Partnering with Consumers and SA Health Framework for Active Partnerships with Consumers and Community).

This project is supported by a Governance Group, a Reference Group, a Health Interface Group and an OPA Internal Working Group.

Restrictive Practices Project

As reported in consecutive annual reports, the OPA has experienced an increased focus on restrictive practices as a result of increased regulation of restrictive practices for NDIS participants and due to a decision of the Full Court of the Supreme Court of South Australia in 2019 which related to detention of people with impaired decision-making capacity.

The OPA responded to this situation by establishing a project delivered by a small specialist guardianship team. The goal of the project was to streamline internal practices for authorisation of restrictive practices proposed to keep guardianship clients safe.

The project achieved the following outcomes in 2020–21:

- established a consistent process for assessment, authorisation and documentation of restrictive practices by the OPA
- worked closely with the NDIS Quality and Safety Commission Behaviour Support Team (South Australia) to deliver information and education to the disability sector about restrictive practices
- reviewed guardianship orders for all of the OPA's clients and applied to the SACAT for variations of order and/or for special powers orders of detention to properly authorise restrictive practices.

The OPA will extend the project for at least the first half of 2021–22 to manage the change in restrictive practices authorisations for NDIS participants (following the implementation of the changes to the *Disability Inclusion Act 2018*) and to manage the changes to regulation of restrictive practices in residential aged care.

Business Improvement/Projects

COVID-19 working environment

The OPA continues to work between the office and home environment in accordance with government restrictions or lockdown requirements.

The OPA has transitioned to using Microsoft Teams along with other media platforms to allow staff to call, video conference and join webinars to undertake their duties. Staff are equipped with mobile technology to allow a flexible working approach. Utilising modern technology has allowed the office to continue to perform the functions required to support our clients.

Organisational reporting: Development of a data dashboard

The Public Advocate recognises the value of quality and timely data to:

- support and inform the delivery of services
- planning for future business needs and
- support evidence-based decision making.

The OPA commenced a project in early 2020 to develop an automated suite of reports for key performance indicators and other organisational activity.

An initial set of reports was produced in October 2020. In April 2021, the OPA collaborated with the Attorney-General's Department Performance and Business Services to further develop the reports into a detailed data dashboard.

The initial version (Stage 1) of the dashboard is expected to move into production for use by OPA management in July 2021. The dashboard will provide a more efficient process for generating organisational reports and assist to identify gaps in the current collection, reporting and analysis of data. Stage 2 will include further enhancement to the dashboard based on user feedback and identifying other measures to support future planning and decision making.

Engagement

Meetings

In 2020–21 the Public Advocate met with key ministers to discuss systemic issues impacting on OPA clients. 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:

- restrictive practices
- adult safeguarding
- Safeguarding Task Force
- Disability Royal Commission
- mental health services
- OPA/SAMRHI research project
- supply of supported accommodation for people with complex needs
- COVID-19 detention and consents and
- the review of the *Advance Care Directives Act 2013*.

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 met twice in 2020–21. This year, AGAC meetings considered the impact of COVID-19 on the operations of council members and delivery of services to the community. AGAC meetings have continued to inform systemic advocacy and strategic policy development, particularly in the areas of national reforms to enduring powers of attorney, restrictive practices, safeguarding adults and supported decision making.

Written submissions

The Office of the Public Advocate also makes submissions on issues that are relevant to the clients of the OPA and proposed legislative and systemic changes that impact on the function of the OPA. During the 2020–21 financial year the Public Advocate made the following submissions:

- submission to the South Australian Law Reform Institute on the Operation of Powers of Attorney in South Australia
- submission – Draft Consent to Medical Treatment and Palliative Care (Restrictive Practices) Amendment Bill 2020
- proposed changes to the *Advanced Care Directives Act 2013* and the recommendations identified in the 2019 Lacey Review
- National Register of Enduring Powers of Attorney Public Consultation Paper (with AGAC)
- State-Wide Palliative Care Services Plan 2021–2026
- NDIS Restrictive Practices Authorisation Consultation
- response to new rules about restrictive practices in South Australia (amendments to the *Disability Inclusion Act 2018*)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Issues paper – Safeguards and Quality
- submission to the National Disability Insurance Agency – Consultation papers for how the NDIS works for 7–65-year-olds (Independent Assessments and Access and Eligibility)
- response to Evidence (Vulnerable Witnesses) Amendment Bill 2020
- National Disability Strategy Consultation
- proposed changes to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act)
- September 2020 – DHS COVID-19 SIL Operational Response Plan
- NDIS Support Coordination Review
- NDIS Psychosocial Disability Recovery-Orientated Framework – consultation paper.

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*:

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

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

Other applicable legislation

Advance Care Directives Act 2013 and Regulations (SA)

Aged Care Act 1997 (Cth)

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

COVID-19 Emergency Response Act 2020 (SA)

Criminal Law Consolidation Act 1935 (SA)

Disability Inclusion Act 2018 (SA)

Mental Health Act 2009 (SA)

Mental Health Regulations 2010 (SA)

National Disability Insurance Scheme Act 2013 (Cth)

Office for the Ageing (Adult Safeguarding) Amendment Act 2018 (SA)

Powers of Attorney and Agency Act 1984 (SA)

Problem Gambling Family Protection Orders Act 2004 (SA)

Wills Act 1936 (SA)

Appendix 2: List of acronyms

ACD	Advance care directive
AGAC	Australian Guardianship and Administration Council
AGD	Attorney-General's Department
AO	Authorising Officer
APEA	Alliance for Prevention of Elder Abuse
ASU	Adult Safeguarding Unit
CALD	Culturally and linguistically diverse
CVS	Community Visitor Scheme
DHS	Department of Human Services (SA)
DHW	Department for Health and Wellbeing (Commonwealth)
DRS	Dispute Resolution Service
EWG	Expert Working Group
HASP	Housing and Support Partnership
NBU	Neuro-behavioural unit
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Q&SC	National Disability Insurance Scheme Quality and Safeguards Commission
OAW	Office for Ageing Well
OPA	Office of the Public Advocate
PT	The Public Trustee
SACAT	South Australian Civil and Administrative Tribunal
SAHA	South Australian Housing Authority
SAHMRI	South Australian Health and Medical Research Institute
SC	Support Coordinator
SDA	Specialist disability accommodation
SDM	Substitute decision-makers
SIL	Supported independent living
SRF	Supported residential facility
YPIRAC	Younger people in residential aged care

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 2020–21
Agency performance management and development systems	Refer to the AGD Annual Report 2020–21
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2020–21
Work health and safety and return to work performance	Refer to the AGD Annual Report 2020–21
Fraud detected in the OPA	Number of instances: 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2020–21
Whistle-blowers' disclosure	Refer to the AGD Annual Report 2020–21
Executive employment in the agency	Refer to the AGD Annual Report 2020–21
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2020–21
Complaint outcomes (table)	Refer to the AGD Annual Report 2020–21

OFFICE OF THE PUBLIC ADVOCATE

Annual Report 2020-21



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OFFICE OF THE PUBLIC ADVOCATE

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Date presented to Minister: 27 September 2021

Acknowledgement of Country

Aboriginal people have made and continue to make a unique and irreplaceable contribution to the state of South Australia.

The Office of the Public Advocate (OPA) acknowledges and respects Aboriginal people as the state's first people and nations and recognises Aboriginal people as traditional owners and occupants of South Australian land and waters.

The Office of the Public Advocate acknowledges that the spiritual, social, cultural and economic practices of Aboriginal people come from their traditional lands and waters, and that Aboriginal people maintain cultural and heritage beliefs, languages and laws which are of ongoing importance today.

Terminology

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

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

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The Hon Vickie Chapman MP
Deputy Premier
Attorney-General

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 OPA during 2020–21. There were many highlights and achievements for the OPA during the year, including collaborating with the Public Trustee regarding joint clients, collaborating with key agencies and stakeholders, reform in the area of restrictive practices and providing high quality community education.

The COVID-19 pandemic continues to impact on the OPA, on the way we interact with our clients and members of the public, on adjusting to the vaccine roll out, and on finding a ‘new normal’ way of working. The OPA team continue to rise to the challenge during this unusual time.

I express thanks to the OPA staff for their ongoing commitment and support whilst working with South Australians who require assistance with decision making, adult guardianship, dispute resolution about advance care directives and consent to medical treatment, and providing general information and education to the South Australian community as well as the disability, health and aged care sectors.

Submitted on behalf of the Office of the Public Advocate by



Anne Gale
Public Advocate

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Introduction

Message from the Public Advocate

The Office of the Public Advocate assists in decision making, guardianship and dispute resolution for its clients and broad system advocacy on behalf of all South Australian adults with cognitive challenges.

The Office of the Public Advocate continues to experience a significant increase in the number of clients under guardianship and, as an organisation, we will meet the challenge of a growing demand for our services and ensure a focus on safety and quality.

In 2020–21 the OPA had an increase in both guardianship applications (increase of 7 per cent) and new guardianship appointments (increase of 10 per cent), as 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 (or authorisation) for the use of restrictive practices.

Like many organisations, COVID-19 is having a significant impact on the OPA. Not only have we found new ways of working, but we have also taken steps to ensure the safety of our clients through exercising legislated powers given to the OPA to ensure client safety, particularly during cluster events, and providing consent for our clients to receive the appropriate vaccinations.

Our sector and the community continue to be saddened by the death of Ms Ann Marie Smith. The Disability Advocate Dr David Caudrey and Disability Rights Advocate Ms Kelly Vincent delivered the final report in September 2020 on behalf of the Safeguarding Task Force with recommendations to address gaps in safeguarding for people with disability in South Australia in the July 2020.

In June 2021 I gave evidence before the Disability Royal Commission. I used the opportunity to highlight the need for state and Commonwealth agencies to work together to ensure that safeguards and checks are implemented for the most vulnerable South Australians.

The OPA continues to collaborate with the South Australian Department of Human Services (DHS), the state Department for Health and Wellbeing (DHW) and non-government service providers to ensure that OPA clients who are participants in the NDIS are able to fully access the scheme and get the best possible plan for their future.



We have also strengthened information-sharing practices with our colleagues in the office of the Public Trustee. This has helped us work together to resolve complex issues and coordinate programs so that we can ensure safeguarding for our clients.

2020-21 Snapshot

a quick look at the numbers



528 new guardianship

293 guardianship files closed

1817 total clients assisted throughout the year

1524 active clients on 30 June 2021

383 COVID-19 vaccination consents

942 clients with an NDIS plan



56 new dispute resolution applications

44 finalised dispute resolution applications



15 written submissions from the Public Advocate



2171 enquiries to the information service



33 education sessions delivered

1011 participants attended an education session

Key issues and reform

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

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established in April 2019 in response to community concern about widespread reports of violence against, and the neglect, abuse, and exploitation of, people with disability.

The Royal Commission is investigating ways of:

- preventing and better protecting people with disability from experiencing violence, abuse, neglect and exploitation
- achieving best practice in reporting, investigating and responding to violence, abuse, neglect and exploitation of people with disability
- promoting a more inclusive society that supports people with disability to be independent and to live free from violence, abuse, neglect and exploitation.

The Royal Commission was initially expected to submit its final report in 2022 but was granted an extension due to the disruption to hearings caused by COVID-19 and in recognition of the broad scope of the issues. The final report is now due on 29 September 2023.

Public Hearing 14: Preventing and responding to violence, abuse, neglect and exploitation in disability services (South Australia) was held in Adelaide between 7 and 11 June 2021. This hearing examined the experiences of two people who received disability accommodation services provided by the Department of Human Services (DHS) in South Australia and the response of the DHS to incidents and complaints raised by the residents' families.

The hearing also focused on the recommendations of the South Australian Safeguarding Task Force report dated 31 July 2020, and the report of the Honourable Alan Robertson SC, *Independent review of the adequacy of the regulation of supports and services provided to Ann Marie Smith, an NDIS participant, who died on 6 April 2020*. The hearing examined the response of South Australian agencies, the National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission (NDIS Commission) to those reports.

The Public Advocate provided a statement to the Royal Commission in her roles as Public Advocate and Principal Community Visitor, addressing issues relating to people living with disability and specifically clients of the Public Advocate. She also appeared before the Royal Commission on Wednesday 9 June 2021 to provide further detail.

In her evidence the Public Advocate acknowledged that just because a person has a disability does not mean that they are vulnerable. An individual's vulnerability is not static. A person may be independent and well connected for the majority of their life, but if these circumstances change, they may find themselves more vulnerable. Conversely, people can

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become less vulnerable over time. The clients of the OPA are some of South Australia's most vulnerable people.

The Public Advocate told the Royal Commission that she is particularly concerned about the heightened risks of violence, abuse, neglect and exploitation of OPA clients with disability in certain circumstances. These include:

- identifying and accessing appropriate accommodation in a timely way;
- navigating complex and lengthy NDIS assessment and approval processes for support and housing;
- the insecurity of service provision in a market-based system, in which service providers may withdraw services to clients with complex needs, at short notice, causing further disruption and instability in their lives; and
- accommodation and support services being provided by the one service provider:
 - If the provider can no longer support the client and withdraws their services, the provider will generally also attempt to terminate the accommodation arrangement. The client must then either source alternative accommodation or face homelessness.
 - There is potential for a conflict of interest to arise if a service provider is both the supported independent living provider and the housing provider.
 - Having a range of different service providers involved in a person's life provides additional eyes to monitor the person's safety and wellbeing. A single service provider reduces the external oversight around the services/ support for the NDIS participant.

The Public Advocate discussed potential safeguarding measures, such as continuous risk assessment for NDIS clients, and the need for state and Commonwealth agencies to work together to ensure the NDIS provides appropriate and safe support for vulnerable South Australians. A copy of the written statement is available [here¹](#). The transcript of the Public Advocate's oral evidence to the Royal Commission is available [here²](#). Links to the statement and transcript will also be available on the [OPA website](#).

Restrictive practices

Restrictive practices are acts which restrict a person's rights and freedom of movement to reduce the risk of physical harm arising from the person's behaviour. Restrictive practices must only be used as a last resort for people who have impaired decision-making capacity if there is no other positive way to reduce the risk of harm. The OPA advocates for the reduction and elimination of restrictive practices wherever possible.

¹ <https://disability.royalcommission.gov.au/system/files/exhibit/STAT.0363.0001.0001.pdf>

² Transcript Day 3 - Public hearing 14, Adelaide (royalcommission.gov.au)

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The 2019–20 Annual Report reported on the increase in the OPA’s guardianship activities in relation to restrictive practices, particularly for guardianship clients who were NDIS participants. That trend continued during 2020–21 and was addressed by the OPA undertaking a specialist restrictive practices guardianship project. The project provided specialist support to the OPA’s guardianship function in order to achieve efficiencies in providing authorisations of restrictive practices.

The Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021 was introduced to the South Australian Parliament on 4 March 2021 and was passed by both Houses on 11 May 2021. This new legislation amended the *Disability Inclusion Act 2018* and sets out a new regime for the authorisation of restrictive practices for NDIS participants in South Australia which aims to better protect the rights of people with disability whilst keeping people safe. The new legislation makes the authorisation of restrictive practices independent from guardianship. NDIS service providers will be able to authorise certain low-level restrictive practices.

A Senior Authorising Officer will be appointed and will sit within the DHS (reporting to the Chief Executive) to approve higher-level restrictive practices and review authorisations made by service providers. The new system for authorisation of restrictive practices for NDIS clients is due to be implemented during 2021–22. The OPA’s role in this area will change but it is anticipated that it will remain significant in terms of approving positive behaviour support plans in response to restrictive practices.

On 27 May 2021, amendments to the legislation relating to restrictive practices in aged care settings was introduced to the Commonwealth Parliament in the Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021. These changes place greater onus on providers of residential aged care to ensure that restrictive practices are properly authorised along with positive behaviour support plans in accordance with the laws of the states and territories. This is likely to have an impact on the guardianship function of the OPA, given that the process for authorisation of restrictive practices for people in aged care in South Australia remains largely governed by the *Guardianship and Administration Act 1993*.

Housing

The Public Advocate has for many years reported on the scarcity of community and other supported and specialist disability accommodation options for people with complex needs. The introduction of the NDIS has further highlighted and exacerbated the nature of the problem. Accommodation arrangements can break down at short notice. The combination of a thin accommodation market and the absence of an accommodation provider of last resort has resulted in people with disabilities who also have behaviours of concern increasingly facing homelessness and/or extended stays in inappropriate housing including hospitals or hotels when housing arrangements break down.

Related to this is the increasingly common practice of service providers offering joint provision of NDIS-funded supported independent living (SIL) and accommodation to an NDIS participant. Whilst these arrangements are not prohibited under NDIS rules and guidelines, they can give rise to a conflict of interest where the NDIS service provider and the accommodation provider (landlord) are the same or related entities. NDIS participants subject to such arrangements are at increased risk of homelessness, as a breakdown in SIL service arrangements may also have consequences for the accommodation arrangements. It is not uncommon for SIL arrangements to break down for people with complex needs and behaviours, particularly given the proliferation of new businesses providing NDIS support services who may not have adequate experience working with complex clients. There is also an increased risk in terms of safeguarding if participants feel they cannot raise concerns about the SIL services for fear that their accommodation will be under threat.

Public Advocate and Public Trustee collaboration

The Public Advocate and the Public Trustee (PT) have a significant number of shared clients, namely, people under both guardianship and administration orders made by the South Australian Civil and Administrative Tribunal (SACAT). These shared customers include some of the most vulnerable people in the South Australian community. During 2020–21, the OPA and the PT strengthened processes for information sharing to deliver more coordinated services and to increase safeguarding of their shared clients. Specific initiatives implemented include:

- The OPA and the PT established regular meetings between staff at the executive and senior management levels to discuss strategic, operational and individual client matters.
- The OPA and the PT have jointly engaged with important stakeholders, particularly the NDIA and the regulator of NDIS services (NDIS Quality and Safeguards Commission). This has included a password authentication pilot project to streamline both organisations' contact with the NDIA.
- Improvements were made to processes for information sharing and escalation of critical incidents relating to shared clients.
- Coordination of staff education programs so that joint education sessions have been delivered on topics such as safeguarding clients.

Functions of the Office of the Public Advocate

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

Purpose and role

The Public Advocate is appointed under the *Guardianship and Administration Act 1993* to provide services that promote and protect the rights of people with a mental incapacity.

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

In fulfilling these statutory obligations, the Public Advocate also:

- reviews programs for mentally incapacitated persons and makes recommendations to the appropriate minister about unmet need or inappropriately met need;
- promotes the rights and interests of persons with a mental incapacity through systemic and individual advocacy;
- provides the community with information and advice related to mental health, guardianship and administration, advance care directives, legislation and related issues;
- acts as a guardian of last resort, and undertakes investigations as required by the South Australian Civil and Administrative Tribunal (SACAT); and
- provides effective dispute resolution to disagreements around advance care directives and consent to medical treatment.

Key services

The Office of the Public Advocate works with and on behalf of adults to provide the following services:

Guardianship (decision making)

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

Resolving and mediating (dispute resolution)

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*.

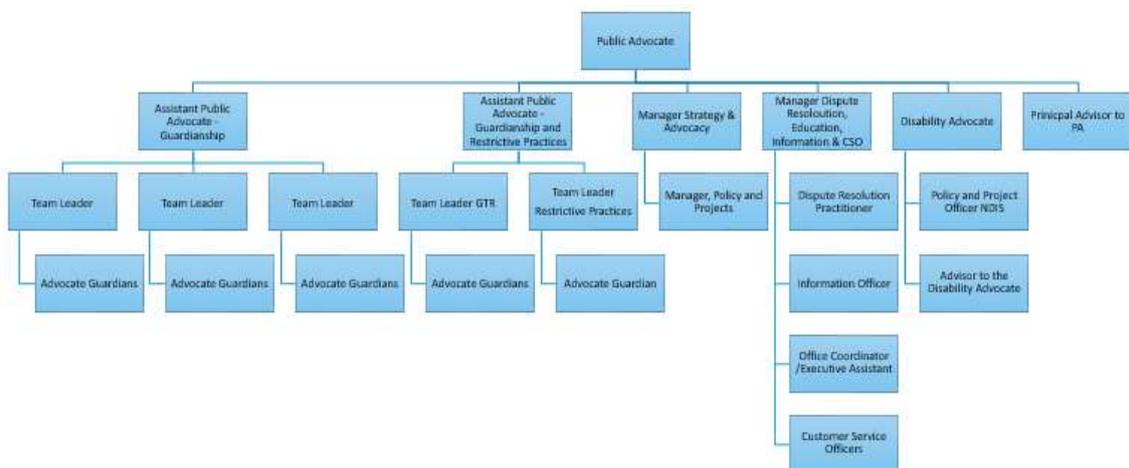
Informing and educating

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



Guardianship

The Public Advocate is appointed as a 'guardian of last resort' for a person who has impaired decision-making capacity (or mental incapacity under the Act) by the SACAT. The Public Advocate delegates the day-to-day decision-making responsibility to staff within the OPA. The person under guardianship is known under the *Guardianship and Administration Act 1993* as the 'protected person'.

Decisions may include:

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

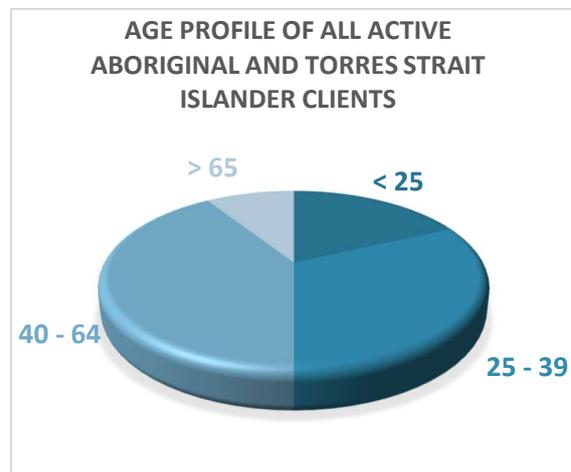
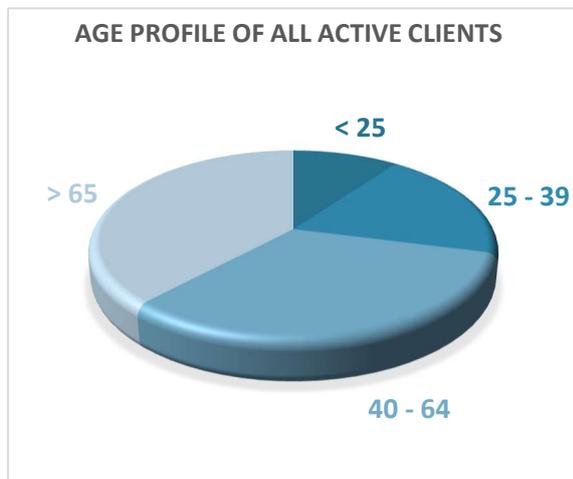
Profile of clients

On 30 June 2021, there were 1524 active clients under the guardianship of the Public Advocate.

In 2020–21, 56 per cent of guardianship clients were male and 44 per cent were female. For Aboriginal and Torres Strait Islander clients there was a higher proportion of male clients (62 per cent). Aboriginal and Torres Strait Islander clients under guardianship accounted for 9.3 per cent of all clients on 30 June 2021, which is 0.7 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).

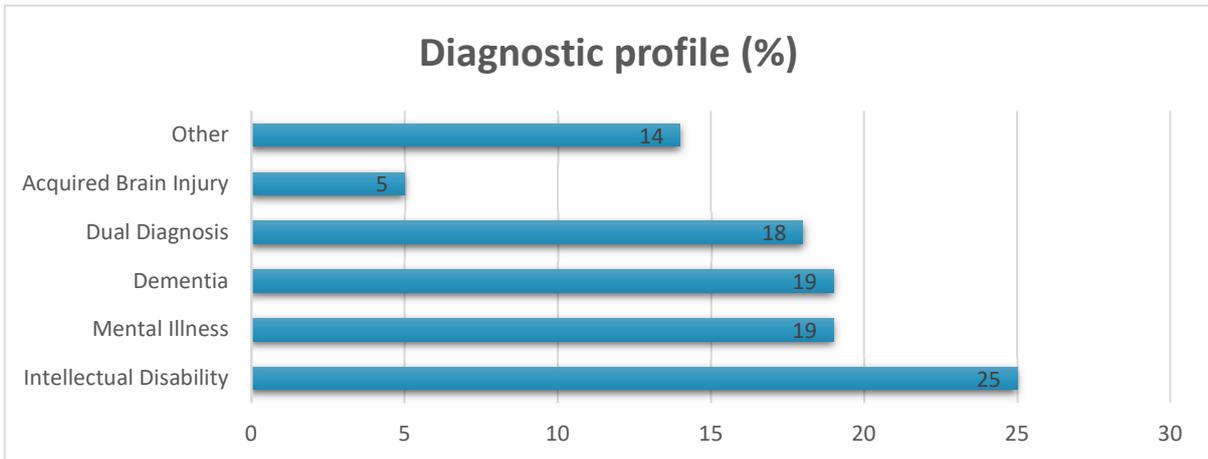
The age profile of guardianship clients indicates that approximately a third (33 per cent) of all clients are in the middle age group of 40 to 64 years and slightly more than a third (38 per cent) are over the age of 65 years. The age profile of Aboriginal and Torres Strait Islander clients shows a higher representation of younger clients aged between 25 and 39 years (32 per cent) and in the middle age group of 40 to 64 years (41 per cent).

There was a much lower representation of Aboriginal and Torres Strait Islander clients in the age group of over 65 years (9 per cent), reflecting the lower life expectancy of Aboriginal and Torres Strait Islander people.



Client diagnostic profile

In 2020–21, people under guardianship with impaired decision-making capacity had conditions in the following areas: intellectual disability (25 per cent), mental illness (19 per cent), dementia (19 per cent), dual diagnosis (18 per cent), acquired brain injury (5 per cent) and other (14 per cent).



This is similar for Aboriginal and Torres Strait Islander clients, although intellectual disability, mental illness, dual diagnosis and acquired brain injury are slightly more prevalent for Aboriginal and Torres Strait Islander people under guardianship: intellectual disability (29 per cent), mental illness (22 per cent), dementia (7 per cent), dual diagnosis (23 per cent), acquired brain injury (7 per cent) and other (12 per cent).



Accommodation

On 30 June 2021, clients under the guardianship of the Public Advocate were residing in:

- disability-specific accommodation (30 per cent)
- residential aged care facility (26 per cent)
- public, private or community rental accommodation (15 per cent)
- their own home (5 per cent)
- family/partner's home or friend's home (5 per cent)
- supported residential facility (6 per cent)
- a forensic service or prison (2 per cent)
- a hospital or a rehabilitation centre (6 per cent)
- a mental health facility (4 per cent)
- no fixed place of abode (1 per cent).

Guardianship activity

Growth in guardianship

The Office of the Public Advocate has experienced a continued increase in the number of clients under guardianship over the past five years. The number of clients screened for potential guardianship appointment, new guardianship clients and the number of clients at the end of the financial years continue to grow.



Over the past five years, an average of 1433 South Australians have received guardianship services each year from the OPA, with 1817 receiving services in 2020–21.

Active matters

On 30 June 2021, the OPA had 1524 active guardianship matters. This was an increase of 233 (18 per cent) from the previous year.

Table 1: Active guardianship matters 2020–21

Guardianship	2016–17	2017–18	2018–19	2019–20	2020–21	↑/↓ since previous year
Active matters (year)	1219	1267	1323	1538	1817	↑ 18%
Active matters (30 June)	942	954	1056	1291	1524	↑ 18%

**There is a discrepancy of 2 files from 2019-20.*

**The figures include a small portion of files administratively opened and closed in error.*

**The figures include 3 files which are being used for system enhancement/testing purposes.*

New appointments

The Office of the Public Advocate attends initial SACAT hearings (screenings) of guardianship applications where the Public Advocate has been nominated as the potential guardian. In 2020–21 there were 700 applications for potential guardianship and the Public Advocate was appointed as guardian in 75 per cent of these cases, which is 528 South Australians with impaired decision-making capacity.

There was a significant increase in both guardianship applications and new guardianship appointments in 2020–21, 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 2020–21

Guardianship	2019–20	2020–21	% ↑/↓
SACAT hearings for guardianship applications	656	700	↑ 7%
New guardianship matters	482	528	↑ 10%

Closed matters

In 2020–21, 293 guardianship matters were closed, which represents 16 per cent of all guardianship matters for the year. This is equivalent to the 2019–20 rate, where the OPA also closed 16 per cent of matters.

Although closures this year and the last are similar to previous years, the OPA has experienced a greater need for ongoing guardianship appointments due to:

- the need to make decisions about, and undertake reviews of, NDIS services;
- 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] SASFC 58).

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.

The OPA seeks to revoke a guardianship order where it is considered 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.

Of the 293 guardianship matters that were closed in 2020–21, 62 matters (21 per cent) were in place for over three years. Guardianship matters were closed for the following reasons:

- order revoked (33 per cent)
- the death of the client (47 per cent)
- the appointment of a private guardian (19 per cent).

Table 3: Length of closed guardianship matters 2020–21

Length of guardianship matter	2019–20	2020–21
6 – < 12 months	123	149
1 year – < 2 years	38	54
2 – < 3 years	28	28
3+ years	58	62
Total closed matters	247	293

Decisions

The role of the Public Advocate is to make decisions for people with impaired decision-making capacity who are unable to make decisions for themselves. These decisions include accommodation, healthcare, lifestyle decisions, decisions about services and supports, and who may have access to the client.

In 2020–21 the breakdown of decisions made for clients under guardianship included five top decision categories:

- 2913 health
- 2562 lifestyle
- 2445 accommodation
- 1307 access
- 910 service/support.

Urgent decision making

The Office of the Public Advocate provides an after-hours 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. Most calls to this service are from health practitioners seeking urgent orders for consent for medical treatment for people under the guardianship of the Public Advocate.

In 2020–21, the OPA responded to 1086 after-hours calls, an increase of 25 calls (2 per cent) from the previous year, with a monthly average of 91 calls.

Similar to last year, the two peak periods continue to be 12:00 pm to 6:00 pm (weekends and public holidays), and 6:00 pm to 9:00 pm on weekdays.

Investigations

At times, the Public Advocate can be directed by the SACAT to investigate and provide a written report of findings in response to an application received by the tribunal. The aim of the report is to provide a balanced, concise overview of the circumstances of the person associated with the application.

OPA staff are responsible for investigations, which involve interviewing the person who is the subject of the investigation, as well as 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.

Investigation reports are presented at a SACAT hearing and considered along with other evidence. The OPA has experienced a decrease in the number of investigations that it has been directed to undertake in 2020–21 compared to the previous year.

Table 4: Investigations for the SACAT in 2020–21

Complaints/information requests	2019–20	2020–21	% ↑/↓
OPA investigations undertaken for the SACAT	38	29	↓ 24%

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 the Public Advocate as a Litigation Guardian to assist the person to instruct a lawyer.

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 eight new litigation files during 2020–21, six more than the previous year.

Table 5: Litigation guardianship 2020–21

Litigation Guardianship	2019–20	2020–21
Appointments	2	8

Complaints and decision reviews

In 2020–21, the OPA responded to 33 complaints/decision reviews, 25 ministerial enquiries and four Freedom of Information requests. These requests related to decisions made by the Office of the Public Advocate staff, communication concerns or other matters.

From the 1817 clients assisted in 2020–21, complaints and decision reviews equated to 2 per cent of clients. Ministerial requests equated to 1 per cent of clients, which is a decrease of 1 per cent from last year.

Table 5: Information requested 2020–21

Complaints/information requests	2019–20	2020–21
Complaints and decision reviews	12	33
Ministerial enquiries	32	25
Freedom of Information requests	5	4

Warrants

A warrant is a written authority by the SACAT to direct a person under section 69 of the *Guardianship and Administration Act 1993* to present to a psychiatric, psychological or medical professional for examination and assessment regarding their mental capacity and to submit a report to the SACAT. There were no applications for a warrant made in 2020–21.

Further information on guardianship

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

http://www.opa.sa.gov.au/resources/fact_sheets

Five-year data can be found at:

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

COVID-19 Emergency Response Act 2020

The *COVID-19 Emergency Response Act 2020* came into effect on 6 April 2020. Schedule 1 of the Act contained 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 are protected by ensuring that detention is the least restrictive alternative and subject to independent oversight and review.

The legislation enabled accommodation service providers to lawfully and urgently detain persons who were at risk of exposure to COVID-19 and/or non-compliant with public health guidance, for a short period, at their usual home. Accommodation service providers could then seek approval from a person's guardian (including the Public Advocate) to authorise detention for a period not exceeding 28 days. If there was no guardian appointed, an Authorising Officer (Adjunct Professor Richard Bruggemann was appointed to this role) or the South Australian Civil and Administrative Tribunal (SACAT) could approve the detention.

Any approval had to implement the least restrictive approach that balanced 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 (AO) and Public Advocate 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 was maintained as much as possible. The detention also had to comply with guidelines published by the Attorney-General.

Decisions to approve detention under schedule 1

During the Parafield Cluster event in November 2020, the Public Advocate approved the detention of four protected persons:

- Two residents were detained at their supported accommodation service after repeatedly attempting to leave their premises contrary to public health advice and a stay at home direction. The order for each resident expired. No further order was sought for either resident as the risk of exposure to COVID-19 had reduced.
- A resident of a supported accommodation service had a medical condition and had left her residence contrary to public health advice and a stay at home direction. Approval was granted to detain her at her residence. The order expired and no further order was sought as the risk of exposure to COVID-19 had reduced.
- A resident of an aged care facility had potentially been exposed to COVID-19 and the service provider was attempting to keep residents isolated in their rooms. Approval was

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granted to detain the resident at the premises. The order expired and no further order was sought as all residents were cleared of COVID-19 on testing.

The OPA has given close consideration to applications for detention and, in some cases, refused applications where detention was not necessary as the resident was complying with the health directions, or other orders or arrangements were already in place to appropriately manage the client's safety.

Decisions by the Authorising Officer (AO) under Schedule 1

The Authorising Officer authorised the detention of five people during the Parafield Cluster event (these were the first orders made by the AO under Schedule 1).

The orders related to five residents of an aged care facility who had potentially been exposed to COVID-19 from an infected carer. The service provider was attempting to keep the residents isolated in their rooms. Approval was granted to detain the residents at the premises.

The residents were not under guardianship, but the Authorising Officer was satisfied that the residents lacked capacity to understand what was required of them. The situation required an urgent response, and the Authorising Officer was able to ensure the service provider could act lawfully to protect the residents and others at the premises. The orders expired and no further orders were sought as all residents were cleared of COVID-19 on testing and the risk of exposure to COVID-19 in South Australia had reduced.

Expiry of the scheme

The powers under schedule 1 of the Act were due to expire in February 2021 but were extended to 31 May 2021. The scheme expired on that date.

Given the small number of applications received under the scheme, it is likely that any future applications for an urgent detention order related to COVID-19 can be managed within the SACAT's jurisdiction. However, the scheme was still an important initiative in response to the evolving COVID-19 situation, ensuring that protected persons (and the community) were kept safe, their rights protected and that they were protected from unlawful detention.

Education of service providers

The OPA contributed to the development of the COVID-19 Supported Independent Living Operational Response Plan, which included recommendations that service providers consider the need for restrictive practices and appropriate orders in the event of an outbreak. OPA staff have also spoken about the scheme at meetings with non-government accommodation service providers.

The AO identified communication and education of stakeholders as an area for ongoing work. The AO undertook education activities with stakeholders to raise awareness of the scheme. He engaged with:

- the SIL Expert Reference Group (with DHS)
- the National Disability Services Positive Behaviour community of interest
- a disability sector forum
- advocacy groups (South Australian Council on Intellectual Disability and Aged Rights Advocacy Service)
- NDIS Quality and Safeguards Commission
- a forum of rural mental health workers.

The AO also provided information/advice to individual service providers about the new legislation. The AO received positive feedback about the government's commitment to people with cognitive disabilities through putting this legislation in place. Providers are keen to ensure that they comply.

Visits by the Community Visitor Scheme under the COVID-19 Emergency Response (Community Visitor Scheme) Regulations 2020

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 and AO 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 Principal Community Visitor has conducted a visit with each of the service providers/premises who were authorised to detain people under the November 2020 orders. The CVS provided a report on the visits to the Public Advocate and the Authorising Officer (relevant to the orders each had made).

COVID-19 vaccinations

A key focus of early 2021 has been ensuring that Office of the Public Advocate clients under a Health Guardianship Order received the required consent for the administration of the COVID-19 vaccination. In accordance with the principles of the *Guardianship and Administration Act 1993*, consideration was given to the client's wishes, any existing arrangements, medical advice, and other relevant circumstances to ensure the proper care and protection of the client.

Phase 1a commenced in February 2021 and included OPA clients from aged care facilities, group homes, hospitals, mental health facilities, supported residential facilities, prisons and rehabilitation centres. Phase 1b commenced in April 2021 and ran concurrently with Phase 1a. Phase 1b included OPA clients within the following settings: own home, boarder/lodger, caravan park, family/partner's home, forensic service, friend's home, rental (not for profit, public and private) and clients with no fixed address.

On 30 June 2021 the OPA had provided 383 consents, approved 2 deferrals to consent at a later stage to give additional time for client/family consideration, and declined consent for 9 clients due to medical or personal reasons. The OPA continues to work with clients, families, facilities, providers, general practitioners and health authorities as part of the vaccine rollout.

Resolving and mediating



Dispute Resolution

The OPA Dispute Resolution Service (DRS) has legislative authority 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 with complex and conflictual situations.

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

1. if there is a dispute in relation to an advance care directive (ACD) that a person has made under the *Advance Care Directives Act 2013*;
2. if there is a dispute about consent to medical or dental treatment under the *Consent to Medical Treatment and Palliative Care Act 1995* – this includes disputes involving children under 16 years of age;
3. if there is a dispute about a decision(s), proposed decision(s), or decision maker(s) under both Acts.

An eligible person is any person who satisfies the Public Advocate that the person has a proper interest in a particular matter relating to the advance care directive or the consent to medical and/or dental treatment. The DRS receives applications for dispute resolution from a broad spectrum of the South Australian community including the SACAT, healthcare and medical practitioners (doctors, nurses and social workers), aged care facilities, service providers, government agencies, non-government agencies, and friends and family members.

The *Advance Care Directives Act 2013*

The *Advance Care Directives Act 2013* was enacted to enable a person over 18 years of age to make decisions and give directions in relation to their future healthcare, residential and accommodation arrangements, and personal lifestyle affairs. It also provides for the appointment of substitute decision-makers to make such decisions on behalf of the person if their decision-making capacity is impaired, to ensure that healthcare is delivered to the person in a manner consistent with their wishes and instructions and to facilitate the resolution of disputes relating to ACDs.

Review of the *Advance Care Directives Act 2013*

In 2019 Professor Wendy Lacey, Professor of Law, University of South Australia, was engaged by the South Australian Government to review the *Advance Care Directives Act 2013 (SA)*.

The terms of reference were to assess the extent to which the objects of the *Advance Care Directives Act 2013* were being achieved and to recommend changes to the legislation, administration, policy and practice which would improve the extent to which the objects are achieved. This involved public and other consultation and the OPA provided a submission.

The review made 29 recommendations. Of the 29 recommendations contained in the report the South Australian Government supported (in full or in principle) 22 of the recommendations. While the review did not note any fundamental issues with the operation of the Act, it did note the low uptake of ACDs in the community. The South Australian Government's response to the review noted that it was committed to increasing the uptake of ACDs and established a non-statutory oversight group to provide advice to the Minister for Health and Wellbeing on implementation of the recommendations.

The OPA was specifically mentioned in three recommendations and all three were supported by the South Australian Government. Of specific note is recommendation 16, which states that the ACD Act should be amended to require the OPA to discontinue a dispute resolution matter where a reasonable suspicion of abuse exists and instead refer the matter to the SACAT for determination; that the OPA should be entitled to disclose the basis of that referral to the SACAT; and that the OPA should publish on its website that evidence of abuse will trigger a discontinuation of mediation.

Recommendation 18 states that the declaratory power of the OPA pursuant to section 45(5) should be repealed. Section 45(5) states that the Public Advocate may upon application of an eligible person make a declaration in relation to a mediation matter. This has not been used because the SACAT has the power to address such issues. All three recommendations formed part of the OPA's submission to the review and are supported by the OPA.

Recommendation 3 states that non-statutory directives irrespective of their form or whether they appear in a statutory ACD should be treated as relevant and highly persuasive. The OPA supports the right of adults who are not able to make a legal document such as an advance care directive, due to impaired decision-making capacity, to be afforded the opportunity to have their views, values and wishes for future decision making recorded. The OPA has partnered with the SAHMRI and received an Information Linkages and Capacity Building grant to undertake a project³ to obtain and document OPA clients' wishes using a supported decision-making framework.

³ [Living My Life Project | Office of the Public Advocate \(opa.sa.gov.au\)](https://www.opa.sa.gov.au/living-my-life-project)

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The OPA is a member of the Advance Care Planning Oversight Group and is actively working on implementing the recommendations to strengthen and increase advance care planning in South Australia and to support the development of non-statutory directives completed by people who lack decision-making capacity.

Substitute Decision-Makers Toolkit Project

The OPA applied to the Office for Ageing Well (OAW) for a grant to develop a toolkit to provide clear information to substitute decision-makers (SDMs) under an advance care directive to improve their knowledge and understanding of their role. In particular, the aim is to provide a greater understanding of decision-making capacity; rights-based decision-making principles; self-determined, supported and substitute decision-making; and the obligations of SDMs. The grant of \$70,000 was offered on 4 June 2021 and the project will be funded for two years.

The OPA aims to deliver the following outcomes:

- improved community understanding and knowledge of the role of SDMs under an advance care directive;
- a toolkit to support SDMs in their role; and
- promotion of the SDM toolkit to targeted groups throughout South Australia via educational workshops.

Consent to Medical Treatment and Palliative Care Act 1995

In 2013 when the *Advance Care Directives Act* was enacted, amendments were made to the *Consent to Medical Treatment and Palliative Care Act 1995* (the Consent Act). These amendments included the OPA's legislative authority to resolve disputes related to consent to medical, dental and healthcare treatment.

A person cannot receive medical or dental treatment without consent. The Consent Act specifies who can consent to treatment for adults and children when a person cannot give their own consent including in medical emergencies. When a person is assessed as not being able to give consent for a particular treatment, then consent must be sought from a substitute decision-maker who can be a substitute decision-maker under an ACD or a 'person responsible' as defined by Section 14 of the Consent Act.

A 'person responsible' is defined in the Consent Act in the following hierarchical order:

- a guardian appointed by the SACAT to make healthcare decisions who is available and willing to make the decision;
- an adult domestic partner or 'prescribed relative' (adult related to the person by blood, marriage, adoption or Aboriginal kinship/marriage) with a close and continuing relationship with the person who is available and willing to make the decision;

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- an adult friend who has a close and continuing relationship with the person who is available and willing to make the decision;
- someone charged with the person’s ongoing day-to-day care and well-being (such as a Director of Care in aged or supported care) who is available and willing to make the decision (except for chemical restraint).

In many circumstances the Consent Act negates the need for the SACAT to make a guardianship order. The OPA Information and Education Service provides information and education to the community about the Consent Act to increase awareness of who can consent to healthcare/medical and dental treatment if an adult is not capable of consenting themselves.

DRS applications

Applications made to the DRS often involve conflict between family members in regard to decisions relating to a person with impaired decision-making capacity. In 2020–21 reasons for the applications included being prevented from visiting a loved one, disagreements about accommodation decisions, general concerns about the decisions being made by substitute decision-makers appointed under an ACD and disagreements about a decision and/or decisions amongst substitute decision-makers appointed under an ACD.

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

Table 6: DRS applications 2020–21

DRS applications	2020–21
Family and friends	42
Healthcare professionals	6
Service providers	2
Aged care facility	1
Adult Safeguarding Unit	3
Legal representative	1
Person themselves	1
Total applications	56

Referrals to DRS

Section 49 of the *Advance Care Directives Act* provides for the SACAT to refer a matter to the OPA DRS if the SACAT is of the opinion that it is more appropriate for the matter to be dealt with by the DRS. The regulations under the ACD Act set out the provisions for this process.

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In 2020–21 the SACAT referred to the OPA DRS on 11 occasions. This is an increase from 3 referrals in 2019–20.

The Adult Safeguarding Unit (ASU) also referred 3 matters to the DRS in 2020–21.

The OPA DRS seeks, where appropriate, to avoid the matter proceeding to the more formal SACAT process and potentially resulting in the revocation of a person's substitute decision-maker/s role and the appointment of the Public Advocate as guardian.

Finalised matters

The DRS has developed a model of dispute resolution including mediation that is rights based and person centred, enabling participants who disagree to identify 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 7 indicates the outcome of all 44 matters finalised by the DRS during 2020–21. A total of 14 matters were still open on 30 June 2021.

Table 7: DRS finalised matters 2020–21

Finalised DRS matters	2019–20*	2020–21
Resolved	21	14
No further action	20	10
Referred to the SACAT	7	7
Referred to ASU	0	1
Withdrawn	8	10
Client deceased	1	2
Total	57	44

*Correction to the 2019–20 Annual Report: the number of closures reported for 2018–19 was 64 but should have stated 66. The breakdown was reported correctly; however, the total was incorrectly added up.

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There were 10 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 six formal mediations, assisting a total of 19 participants, four of these matters were resolved with a full mediated agreement. One reached partial agreement at mediation and an application was made to the SACAT to appoint a guardian to resolve the outstanding issues. The other was deemed inappropriate for mediation and the OPA referred the matter to the SACAT for resolution.

Preliminary assistance

Although mediation is a helpful tool for dispute resolution, there are many occasions where it is either not appropriate, not possible, or not necessary to reach a conclusion. At these times, the *Advance Care Directives Act* allows us to provide preliminary assistance to interested parties.

Section 45(1) states that the Public Advocate may, on application by an eligible person in respect of an advance care directive or on her own initiative, provide preliminary assistance in resolving a matter, including by:

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

The DRS has noted an increase in the number of matters being resolved under the category of 'preliminary assistance' under section 45(1). Of the 14 matters resolved, a total of eight cases (57 per cent) were resolved without attendance at a formal mediation process. 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 the parties to access options other than a SACAT application.

Case Study: preliminary assistance

Ms M had appointed two relatives as her substitute decision-makers before a diagnosis of Alzheimer's dementia presented a major challenge to her family. Concerned family members initially contacted the Adult Safeguarding Unit, who confirmed that the family conflict revolved around education and communication, rather than abuse, and referred the matter to the DRS.

The DRS contacted the substitute decision-makers and family members. Each conversation included information about the Section 10 principles of the ACD Act, and the family received detailed information about the role of the substitute decision-makers, as well as the SACAT process.

During this time, Ms M was placed permanently in an aged care facility. The SDMs and family were now all in agreement about this, and focused on Ms M's wishes, freedom and care needs. The DRS was able to guide the family towards arranging a schedule for Ms M's loved ones to visit her, as she settled into the facility well with their support.

To ensure that there were no loose ends the DRS contacted the facility and provided targeted education to the staff around decision making under an ACD. The DRS reassured them that they could contact the OPA should the family require any future assistance with decision making for Ms M.

This matter was resolved with ongoing individual support of the overwhelmed substitute decision-makers, as well as education of all the parties, and encouragement and guidance of the family toward decision making that honours Ms M's wishes and upholds the principles of the Act. Through these consistent efforts, the family were able to create secure arrangements within which to continue their very valued relationships with Ms M.

Conflict coaching

During the year the DRS has offered conflict coaching to individual interested parties as part of its dispute resolution toolkit. Conflict coaching involves assisting participants 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 outside of their own personal values and
- options for moving towards a preferred future.

Technology and the DRS

As a result of the need to work differently due to COVID-19, the DRS responded with a more flexible approach to its usual processes. The DRS offered video and telephone consultations and mediations for its clients. The DRS team has continued to make the most of available technology with an increase in clients accessing its services from interstate and overseas.

Case study: technology

In the case of Mr D, whose daughter was located in South Australia, and whose son was located in the United States, communication had become so challenging that a referral was made to the Dispute Resolution Service by the South Australian Civil and Administrative Tribunal to see if the siblings could come to an arrangement rather than revoke Mr D's advance care directive.

Mr D had made his ACD many years earlier, appointing his son, whilst the daughter who lived locally was helping to provide for his care needs. However, the difference between the siblings meant that they were receiving different health information from different sources, resulting in misunderstanding and conflict between them over time.

The key to resolution for Mr D and his family was to open up the lines of communication using video conferencing, and to focus on the wishes expressed in his ACD as a starting point for discussing their shared values – dad's happiness, a sufficient level of care, and minimising the conflict between his loved ones.

Mr D's family worked hard over several sessions to come to agreement about how information would be shared in the future, and to start to build new habits in their communication via phone and email. It was to their credit that Mr D was able to keep his ACD intact, with his appointed decision-maker in place, and his wishes for peace in his family upheld.

Experience over this period has highlighted 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. The DRS takes seriously the opportunities it has for modelling the language and behaviour of supported decision making and promoting positive outcomes for its clients and the people who care about them.

Elder mediation training

From May 2021, DRS staff participated in an extensive online training course with internationally respected mediator and trainer Dr Dale Bagshaw.

This tailored professional development program focused on the needs, experiences, conflicts and challenges facing older people, and their families, carers and communities, and the implications for mediation involving older people.

The main content of the course covered many theoretical issues such as ageing, family dynamics, ethics and culture, as well as practical topics such as working with large groups, screening for capacity and elder abuse, confidentiality, elder law and elder mediation practice skills.

The course also included a module facilitated by clinical neuropsychologist Dr Jane Lonie, who taught participants about capacity assessment and outlined a helpful framework for considering the capacity of older people as we encounter them.

Informing and educating



The provision of information and education to community members, health professionals and service providers is an important role of the Office of the Public Advocate. Areas covered by the information and education services included adult protection, the SACAT application process and information on decision-making capacity, guardianship and administration orders, and advance care directives.

Information is provided in three main ways:

1. the Office of the Public Advocate Telephone Information Service
2. face-to-face education sessions
3. the Office of the Public Advocate website: <http://www.opa.sa.gov.au/>

Fact sheets update

As part of the OPA's commitment to providing up-to-date and easy-to-understand information to the community, the project to update the complement of the OPA fact sheets was completed. The OPA fact sheets provide information to the South Australian community about the functions of the OPA, advance care directives, consent to medical treatment, guardianship, special powers, applications to the SACAT and the OPA's Dispute Resolution Service. The project reviewed the 19 fact sheets and re-wrote them in a simplified, easy-to-follow format, so that the answers to the most frequently asked questions are readily available. The fact sheets were published in August 2020.

Easy Read fact sheets

In 2020–21 the OPA converted all 19 OPA fact sheets to Easy Read format. Easy Read combines text with layout and imagery to simplify and explain information.

The aim of Easy Read is to give more people access to information and to present information for people who are not familiar with English, or who have low literacy or a learning disability. Easy Read's unique layout and style presents information so it is easy to understand.

The OPA engaged an expert in Easy Read to assist with this project, particularly with the design and connecting language and imagery. The Easy Read fact sheets are available on the OPA website.

Information service statistics

In 2020–21 the OPA recorded 2171 requests for information on a wide range of issues. The three most common requests for information related to: guardianship matters 353 (16 per

cent), administration matters 288 (13 per cent) and advanced care directives 262 (12 per cent).

Education sessions

The OPA delivers education to the community and external stakeholders about the *Guardianship and Administration Act 1993 (SA)*, the *Advance Care Directives Act 2013 (SA)* and the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*. This year the education service has seen a significant increase in requests for education sessions with an increased interest in the areas of advance care directives, supported and substitute decision making, and restrictive practices.

The OPA conducted a series of education sessions for second year and fourth year medical students from Flinders University. The sessions explored the legislation (for example, the Consent Act and the *Advance Care Directives Act*), and how it will be applied in their chosen field.

The OPA education team also provides education in collaboration with other agencies. This year the OPA delivered a presentation to social work students at the University of South Australia (Magill Campus) with the Adult Safeguarding Unit. Together with the SACAT, the OPA delivered a presentation at the grand rounds to doctors, social workers and nurses at the Lyell McEwen Hospital.

The OPA also delivered a series of education sessions to staff and families at Minda Incorporated. Many attendees found these sessions particularly helpful as they navigate decision making under informal arrangements for family members.

The education team also drew on the resources of the dedicated restrictive practices team, who provided specialised, up-to-date education to OPA stakeholders about restrictive practices.

In response to COVID, the DRS team has exercised flexibility in providing education services using the different technologies available. Delivering education via video conference has been a useful way of staying connected with the community and professional groups that rely on the OPA for information and assistance. This year the OPA delivered 8 online sessions and 5 via a combination of online and in person, resulting in an increase in participants after a decrease in 2019–20 due to COVID-19 limitations.

Table 9 provides an overall picture of education services for this year.

Table 9: Education service 2020–21

	2019–20	2020–21
Sessions requested	34	37
Sessions delivered	23	33
Participants	508	1011

New evaluation forms

The OPA education team developed new evaluation forms to capture data about the experiences of attendees at education sessions. The new evaluation forms will enable the OPA to continuously improve the education packages with the different expectations and needs of professionals and community members in mind.

Advocacy and promoting rights



The Public Advocate raises awareness of systemic issues that affect people with a mental incapacity/impaired decision-making capacity. 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 2020–21 the OPA continued to advocate for systemic improvements in the way that guardianship clients access disability services. One method of advocating was through the continuation of regular forums with key stakeholders.

In 2019–20 the OPA facilitated two regular stakeholder meetings, the OPA National Disability Insurance Agency (NDIA) Forum and the OPA Disability Forum where stakeholders from the NDIS Quality and Safeguards Commission, the DHS, the SACAT and the PT collaborated. In 2020–21 these forums were combined, bringing the NDIA and the NDIS Quality and Safeguards Commission (NDIS Commission) to the table at the OPA Disability Forum. This was a successful transition to one forum where a range of topics were discussed such as:

- the work of all stakeholders
- the use of restrictive practices and authorisation processes by the SACAT and the OPA as guardian
- the progression of the Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021
- supported decision making projects underway within both the DHS and the OPA
- COVID-19 updates including the implementation of the *COVID-19 Emergency Response Act 2020* and responses from stakeholders including the vaccination roll out.
- the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
- information sharing agreements/exchange between parties
- after-hours responses via Marathon Health
- the OPA/NDIA/PT Password Authentication Pilot Project
- housing and tenancy matters for OPA clients
- conflict of interest issues for the OPA when a single service provider provides housing, supports and support coordination for OPA clients in particular in thin markets.

National Disability Insurance Scheme (NDIS)

On 1 July 2019 the NDIS reached full implementation in South Australia. This resulted in substantial change to the provision of personal support through greater choice and control for people with disability. The Office of the Public Advocate had a critical role in supporting guardianship clients transitioning to the NDIS and ensuring that their NDIS plans provide adequately for any required services and supports.

As of 30 June 2021:

- A total of 942 clients (61 per cent) had an approved plan, comprising 872 clients under 65 years and 70 clients over 65 years.
- A small number of OPA clients (80 people) were not NDIS participants, either because they were new to the OPA or had access issues which OPA staff were investigating.

The OPA is also working closely with the DHS, the lead agency on the overarching data-sharing agreement between the NDIA and state government agencies. The agreement is due to be completed in 2021–22 and will enable the OPA to more efficiently identify which OPA clients are not yet NDIS participants.

The OPA continues to advocate for OPA clients for access to the NDIS and appropriate funding for supports and 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 and participated in regular NDIS-related meetings, stakeholder forums and workshops, including:

- OPA Disability Forum with the NDIA, the NDIS Quality and Safeguards Commission, the Public Trustee, SACAT and the DHS, chaired by 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
- NDIA Community Engagement fortnightly agency update.

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Issues raised	Outcomes achieved
<p>Risk of gaps in the market leading to participants with high and complex needs being unable to access a service.</p>	<p>Issue escalated to NDIA senior staff as the NDIA has the lead role as 'market steward'.</p>
<p>Exceptionally Complex Support Needs Pathway to provide a specialist support service for clients facing challenges such as mental health issues, incarceration or homelessness.</p>	<p>This NDIS 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.</p>
<p>The need for support during a crisis and after-hours issues, such as accommodation breakdown and homelessness.</p>	<p>In May 2020 the NDIA engaged a provider for the after-hours Exceptionally Complex Support Needs Program in South Australia to provide for NDIS participants who require an emergency after-hours response. Referrals to this service can only be made by approved referrers, including SA Health, SAPOL and SA Ambulance Service. The OPA is now an approved referrer to this service.</p>
<p>OPA staff have had difficulty speaking to the NDIA about participants who are OPA clients without providing personal information such as their own Medicare number. Once provided, the NDIA will only speak with the individual staff member. This is the result of the NDIA not having mechanisms for recognising an organisation as a nominee or contact for a participant.</p>	<p>The OPA is participating in the OPA/NDIA/PT Password Authentication Pilot Project with the NDIA and the Public Trustee. The project allows OPA and PT staff to speak directly to the NDIA about a participant using a unique and secure password. Processes are now in place in the OPA for SACAT orders to be sent to the NDIA and NDIS plans to be returned from the NDIA. This process appears to be working well.</p>
<p>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.</p>	<p>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 and the Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann Marie Smith, an NDIS participant, who died on 6 April 2020 by Alan Robertson in 2020.</p>

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<p>The OPA currently relies on the DHS to undertake all data matching with NDIS data in order to identify shared clients and analyse their NDIS status.</p>	<p>A data-sharing agreement between the NDIA and state government agencies is being developed and will allow for more timely and accurate data exchange.</p>
<p>The lack of specialist disability accommodation for OPA clients within the overarching 100 Homes Project for people living with disability, especially the 31 homes for people with psychosocial disability and high and complex needs.</p>	<p>A number of meetings have been held with stakeholders in the NDIA to endeavour to address this issue for the participants of the 31 Homes Project. A total of 24 of the 31 people are OPA clients. Of the OPA clients:</p> <ul style="list-style-type: none">• 16 have transitioned to 31 Homes properties• 3 clients have transitioned to alternative accommodation• 5 clients are currently in the process of transitioning.

Disability Advocate

Dr David Caudrey was appointed as the Disability Advocate for South Australia in November 2018 for an initial period of one year. He has subsequently been extended in this role and in 2020, following the recommendations of the Safeguarding Task Force, the government committed funding for the Disability Advocate for a further three years until June 2023.



The Disability Advocate is located within the Office of the Public Advocate. The location of this role within the OPA maintains a separation from service provision and fits well with the functions of the Public Advocate. The Disability Advocate reports to the Minister for Human Services.

The role of the Disability Advocate involves:

- hearing from NDIS participants and their families about their experiences of the NDIS;
- advocating so that South Australians with a disability get the best deal from the NDIS; and
- leading projects at the request of the state government.

In 2020–21 COVID-19 impacted on the ability to meet face to face with people with disability and their families. Despite this, the Disability Advocate and his small team managed to engage with approximately 340 individuals and groups to discuss a range of matters relating to the NDIS in South Australia, including through online meetings and telephone calls. It should be noted that some of these meetings also related to the work of the Safeguarding Task Force.

Safeguarding Task Force

Following the tragic circumstances surrounding the death of Ms Ann Marie Smith (an NDIS participant living in South Australia), the Disability Advocate was asked to co-chair the Safeguarding Task Force with disability rights advocate Ms Kelly Vincent. The Task Force membership comprised people with disability, service providers and state government officials and was tasked with examining gaps in safeguarding for people with disability in South Australia.

The Safeguarding Task Force members met on four occasions, including a special meeting only for members with lived experience of disability. The co-chairs met with a range of people to seek their views around safeguarding people with disability. The Task Force also received several submissions. These meetings and submissions assisted the Task Force in identifying 14 gaps and making seven recommendations. These are detailed in the

Safeguarding Task Force Supplementary Report (September 2020) which can be found on the [Disability Advocate page⁴](#) of the OPA website.

The state government has progressed a number of the recommendations including:

- bringing forward the extension of the scope of the Adult Safeguarding Unit to include vulnerable adults who are NDIS participants over 18 years of age as of 1 October 2020
- investing \$400,000 a year in individual advocacy to improve the capacity to assist individuals to access what they need from the NDIS and from the community
- additional funding to continue the work of the Disability Advocate.

Office of the Public Advocate clients' experience of the NDIS

In February 2021 the Public Advocate asked the Disability Advocate to undertake a project to examine OPA clients' experience of the NDIS. This project aimed to explore whether OPA clients are benefiting from the NDIS, are experiencing any challenges and what impact the NDIS is having on the functioning of the Office of the Public Advocate. The Disability Advocate undertook one-on-one interviews with each of the OPA delegated guardians to inform the project.

The interim findings were:

- Overall, OPA clients are getting a good deal from the NDIS. There is more funding in the sector than ever before.
- The NDIS is so complex that people with a mild disability are sometimes seeking OPA guardianship to assist them to navigate the system. This is both disempowering to the individual and a significant stress on the workload of the OPA.
- The OPA has seen applications made to the SACAT for guardianship orders purely to help the protected person and their family navigate the NDIS.
- In the absence of a case management role, there is no overall person with responsibility for ensuring that the participant gets the services and supports they need. Support coordination may be the closest possible role in the NDIS to meet this need, but this is time limited and quantity limited, and funding is not always available to assist in addressing a crisis for the participant.
- In the absence of a person with overall responsibility (or case management), OPA guardianship staff often take on this role by default, despite it falling outside of their traditional remit.
- The advent of the NDIS has resulted in a significant increase in administrative tasks for OPA guardianship staff, such as reviewing service agreements, behaviour support plans, restrictive practices, etc.

⁴ [Disability Advocate | Office of the Public Advocate \(opa.sa.gov.au\)](#)

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- An increase in NDIS funding has seen growth in the disability sector with new providers entering the market. The market is still immature, and the skills and quality of service providers and support coordinators vary.
- OPA delegated guardianship staff at times find themselves directing support coordinators (SC). There is no minimum qualification for an SC.
- OPA clients can have some of the most complex and challenging support requirements. In a market-driven sector, service providers and support coordinators can choose whom they work with and on occasions they have opted to no longer work with an OPA client due to their complexity.
- The NDIS is not as flexible as participants' lives and, as a result, is not as responsive as it needs to be when there are changes in a person's life.
- There is no service provider of last resort. Often OPA clients find themselves in inappropriate settings such as social admissions to hospital to avoid homelessness.
- There are also challenges in finding appropriate housing. This compounds the problem that the NDIA often cannot respond to a crisis in a timely manner.
- There is market thin-ness in particular areas such as regional and remote areas. This means that there is little or no choice of service provider in those places.
- As a safeguard, the OPA endeavours to separate the provision of housing and support, and support coordination. In some instances, this is not possible and the OPA has to consent to a non-preferred option to prevent the person from being homeless.

Disability Advocate reports and submissions

In late 2020 and early 2021 the Disability Advocate held focused consultations with Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse (CALD) backgrounds and people involved in corrections, youth justice and child protection. Each of these cohorts identified very specific challenges. Reports relating to the experiences of CALD people, Aboriginal and Torres Strait Islander people and children are all available on the [Disability Advocate page](#) of the OPA website.

As noted in the 2019–20 Annual Report, people generally agree that the NDIS greatly benefits those who can access and take full advantage of the NDIS. For those people who fall outside of this cohort there are significant challenges.

Overall feedback is that there continue to be challenges for people engaging with the NDIS related to system design, responsiveness and customer service. Not having a clear contact or go-to person to help people navigate the NDIS or when problems arise remains a key shortcoming of the NDIS.

The Disability Advocate undertook an exercise to identify the range of roles a person with disability encounters during their interactions relating to the NDIS. This is demonstrated in 'Cast of Players' available on the [Disability Advocate page](#) of the OPA website.

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The Safeguarding Task Force also identified that there are several gaps that need to be addressed to safeguard vulnerable people. The NDIS, the NDIS Quality and Safeguards Commission and the state government only go so far in this safeguarding and further work is required.

In the last year the Disability Advocate has written joint submissions with the Public Advocate on a range of topics including:

- NDIS access and eligibility
- the Disability Royal Commission – safeguards and quality
- new rules about restrictive practices in South Australia (amendments to the *Disability Inclusion Act 2018*) – response
- Evidence (Vulnerable Witnesses) Amendment Bill 2020 – response
- proposed changes to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act) – response
- DHS COVID-19 Supported Independent Living Operational Response Plan – response
- NDIS Support Coordination Review.

The Disability Advocate will continue to pursue systemic issues with the NDIS for South Australians. The changes and challenges presented by the implementation of the NDIS have had a direct impact on the number of orders made by the SACAT appointing the Public Advocate as the guardian for persons with impaired decision-making capacity. The NDIS is built on the concept of the person with a disability exercising choice and control over their lives and, as a result, there is an inevitable increased workload for whoever is making decisions for a person with impaired capacity. This can put strain on family members and lead them to withdraw as either informal or formal decision makers, leaving the SACAT of necessity to appoint the Public Advocate to this role. There is also a concomitant increase in workload for the OPA in dealing with the administrative requirements of the NDIA.

NDIS Quality and Safeguards Commission

The regulator of registered NDIS service providers, the NDIS Quality and Safeguards Commission (the NDIS Commission), marked two years of operation in South Australia on 1 July 2020. The OPA has actively engaged with the NDIS Commission, particularly in relation to behaviour support and restrictive practices as well as strengthening relationships, in the areas of complaints, reportable incidents and compliance.

Unmet need in disability services

1. Appropriate supported accommodation options

The lack of suitable housing and accommodation options for people with impaired decision-making capacity under guardianship has been previously highlighted by the OPA in its advocacy activities. This gap in services for clients with disability leads to heightened risks of violence, abuse, neglect and exploitation in circumstances where they cannot access safe or appropriate accommodation in a timely way. The shortage of appropriate supported accommodation options continues to grow and has resulted in an increasing number of OPA clients with disability spending extended periods of time in hospitals or other inappropriate accommodation including hotels. The issue is systemic, places vulnerable South Australians with impaired decision-making capacity at increased risk of homelessness and is exacerbated by a number of contributing factors which are discussed below.

2. Locating affordable and appropriate housing

The process of locating affordable and appropriate housing for people with impaired decision-making capacity involves a range of NDIS processes. NDIS plans must include a goal related to home and living supports and must be supported by assessments, increasing forms of evidence and subsequent approvals where applications for supported independent living (SIL) and specialist disability accommodation (SDA) are involved. The application and approval processes are sequential rather than concurrent and commonly result in lengthy wait times that can take months. Review and appeal processes result in additional delays and many short-term and medium-term housing and accommodation options will not be approved by the NDIA unless a longer-term accommodation option has also been identified.

3. Exceptional clients with high needs and increased complexity

The OPA continues to be appointed the guardian of last resort for clients with some of the most complex and high needs in the community. Increasing numbers of OPA clients require individualised, tailored and customised housing solutions that do not exist in the current market-based choice-oriented structure. Many OPA clients who present with high needs, dual diagnosis, complex psychosocial disabilities and complicated behaviours are not funded for higher levels of housing and accommodation support. This is resulting in increasing rates of housing eviction, placement breakdown, withdrawal of accommodation and independent living supports, social admissions to hospital, risk of homelessness and entry into the criminal justice system. Providers offering accommodation and support services to clients with the most complex needs are significantly limited, which in some cases results in staff with limited skills delivering under-funded levels of service to some of the most complex and high-risk clients in the state.

4. Lack of crisis response and clear escalation pathways

Under current arrangements, there is no quick response or pathway to safeguard an NDIS participant if their support services or housing break down or fail. Escalation pathways do not provide same-day responses and after-hours crisis pathways do not currently result in locating alternative accommodation and support outcomes for vulnerable clients. Crisis options remain inadequate and are limited to acute hospital settings and other unsuitable arrangements including hotels. A more responsive crisis pathway is urgently required to safeguard vulnerable clients in crisis or in urgent need of temporary and crisis accommodation.

5. Need for a provider of last resort

There has been a significant increase in funding into the disability sector since the commencement of the NDIS. This has resulted in the rapid expansion of existing service providers and a growth in new providers entering the market. In the current market, a service provider can choose whom they want to provide services to. Many OPA clients require highly specialised support and have significant funding packages through the NDIS. Some service providers may agree to take on clients with complex needs and later withdraw services when they are unable to adequately provide the specialised support the person requires. For some OPA clients this failure of support results in cycling through service providers and supports, which can be disruptive and destabilising for them. When services are withdrawn for clients with complex needs, it is difficult to source a substitute provider at short notice and this highlights the need for a provider of last resort. This indicates a need for services and providers that will not cease their support or accommodation for a person who has high and complex needs. A provider of 'last resort' is required in this context and this should be an accommodation or support service provider that can step in when the market fails to provide the required services.

6. Shortage of trained and experienced disability support workers

OPA staff face significant challenges in finding services with suitably trained and experienced staff to work with clients with complex psychosocial disabilities and impaired decision-making capacity. Historically, there have been challenges in attracting and retaining skilled staff in the disability workforce. This has been compounded by the rapid growth in the disability sector since the commencement of the NDIS. Due to the market-based approach, there is not a 'one stop shop' for accommodation for participants with high and complex needs and locating the right accommodation in the right place can be a lengthy process. The knowledge base of the various market providers varies significantly, and specialist/support coordinator services are not always well versed in locating housing or providing the higher level of evidence that is needed to support individualised, tailored and specialised accommodation and supports. This results in a preventable gap in meeting the complex care and support needs of this vulnerable population and client group.

Addressing unmet need in the disability sector

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

1. a greater supply of housing, accommodation and supported independent living options for people with disabilities including psychosocial disabilities, with a particular focus on those under guardianship with complex needs
2. state-based advocacy to the NDIS for SIL and SDA funding and levels of support for vulnerable adults with impaired decision-making capacity who are not eligible for higher levels of housing and accommodation support
3. establishment of a 'provider of last resort' response to address the current market failure for highly vulnerable and at-risk adults with impaired decision-making capacity
4. establishment of responsive crisis pathways and gateway services to safeguard vulnerable clients who are in urgent need of crisis, temporary and immediate-term accommodation
5. greater supply of suitably trained providers and support specialists who are experienced with the care and support needs of vulnerable adults with impaired decision-making capacity, and who present with complex needs, dual diagnosis, complex psychosocial disabilities and complex behaviours
6. a 'matching' mechanism for demand and supply of supported disability accommodation such as a supported accommodation register in South Australia
7. education of specialist and support coordinators regarding housing options via market stewardship.

Unmet need in mental health

The key issues for the OPA's guardianship and advocacy functions in the area of mental health in 2020–21 were the transition of people with psychosocial disability to the NDIS and the availability of appropriate supported housing options for people with impaired decision-making capacity and mental health needs.

1. Psychosocial disability transition to NDIS

In South Australia, people with psychosocial disability – which means disability which arises from a mental health condition – were due to transition to the NDIS by 30 June 2019; however this has not been fully completed. In general, South Australians with psychosocial disability are entering the NDIS at a slower rate than others across the country.

There can be particular obstacles for people with psychosocial disability entering the NDIS. These include, at times, challenges in initiating and maintaining engagement with the NDIS access process, but also the intersection between health and disability for people living with psychosocial disability. The OPA continues to work closely with mental health services to assist in ensuring that all people who are eligible for support under the NDIS are able to access it.

During 2020–21, the OPA continued to participate in the South Australian NDIS Psychosocial Taskforce, led by the Office of the Chief Psychiatrist, which brings together important stakeholders to drive the increased participation of people with psychosocial disability in the NDIS.

On 30 June 2020 there were 1740 South Australians with psychosocial disability participating in the NDIS. By the end of quarter three of 2020–21, that number had increased to 2393. This represents less than 50 per cent of people with this type of disability who may be eligible for NDIS support (based on the Productivity Commission's estimate that 4800 people in South Australia with psychosocial disability would be eligible for the NDIS).

At 30 June 2021, people with psychosocial disability represented 11 per cent of the total number of NDIS participants in South Australia. The majority of people under the Public Advocate's guardianship with a primary diagnosis of mental illness or psychosocial disability have now transitioned to the NDIS as the OPA has considered this to be a priority for its clients.

2. Housing

The scarcity of appropriate supported housing options for people with impaired decision-making capacity and mental health needs remains a significant issue, as it is for people with complex needs and disabilities generally. This can lead to people with mental health conditions staying in inpatient settings, forensic health services and sometimes in prison for inappropriately long periods.

Under the South Australian government's '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. This resulted in the 31 Homes Project which enabled a number of the OPA's clients to transition from inpatient settings into the community with appropriate support. However, there remains a significant number of the OPA's clients with psychosocial disability and complex presentations who may spend periods of time in hospital due to breakdown of accommodation, who would benefit from a similar model of support.

Supported residential facilities (SRFs) continue to be one of the only other community-based supported housing options for people with mental health needs. The SRF sector is an important housing option for OPA guardianship clients. However, this type of accommodation, which is usually of a congregate living nature including shared rooms in some circumstances, is often unsuitable for people who need high levels of support and supervision or who have otherwise complex mental health needs.

The NDIS has announced its intention to ensure the transition of all people under the age of 65 living in residential aged care into more age-appropriate accommodation by 2025 where possible, as there may still be a small portion of clients who do not wish to transition or are housed in this setting due to market thinness. This is a welcome and important initiative. However, of the OPA's clients who are younger people in residential aged care (YPIRAC), approximately 50 per cent are people with psychosocial disability in addition to other complex needs. While that number is relatively small, it may reflect the broader picture of the YPIRAC population in South Australia, highlighting the difficulty in finding suitable accommodation for people living with complex mental health needs.

The issue of appropriate accommodation is not limited to younger people but can also be an issue for people ageing with complex mental health conditions. In June 2018, the Oakden Oversight Committee's Model of Care Expert Working Group (the EWG) described older people with severe and enduring mental illness as 'a disadvantaged and vulnerable cohort within the South Australian community, for whom adequate choices and viable options are not currently available'.⁵ The EWG indicated that a key problem for older people in South Australia with severe and enduring mental illness was insufficient supported housing

⁵ SA Health, The 'Oakden Report' Response, *Older Person's Mental Health Service – Models of Care Expert Working Group Report*, p. 44.

resources and that available models such as the Housing and Support Partnership (HASP) program focused on younger people while older people were referred to mainstream residential aged care.⁶

The EWG made recommendations about strengthening partnerships between state and Commonwealth government health and aged care services, to better provide services for older people with enduring mental health conditions in the community and mainstream residential aged care. The EWG also recommended the development of specialist residential units for older people with severe and enduring mental health conditions in both regional and metropolitan South Australia. In the OPA's experience, this continues to be an area of unmet need. The OPA has a number of clients with severe and enduring mental illness whose needs cannot be fully met in mainstream aged care, or in dementia-specific neuro-behavioural units. The OPA acknowledges current facilities such as the Neuro-Behavioural Unit at Northgate, the Repat Neuro-Behavioural Unit and the Specialised Advanced Dementia Unit; however further supply is required to meet the demand for this service.

Addressing unmet need in the mental health sector

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

1. enhanced information sharing between state and Commonwealth government agencies to assist individuals to transition to the NDIS
2. greater use of supported decision making for people with psychosocial disability in order to assist them to access services which accord with their will and preferences
3. continuation of the inter-agency work on service connections and housing, bringing together stakeholders from SA Health, the SA Housing Authority, the OPA and the NDIA
4. development of a broad range of accommodation options that includes specialist accommodation for younger and older people with severe mental illness.

⁶ Ibid, p. 44.

Aged care

Aged Care Royal Commission and restrictive practices

In 2020–21, the completion of the Aged Care Royal Commission was the prevalent issue for people receiving aged care, given its broad and detailed inquiry into the aged care system. The Aged Care Royal Commission identified significant areas for reform in the aged care sector, including stronger regulation of aged care and its workforce and the need to urgently provide home care packages to people who have been assessed as needing them.

The final report of the Aged Care Royal Commission made 148 recommendations which included the need for extensive systemic reforms, and a new *Aged Care Act*, including to provide stronger regulation and governance whilst also giving service users greater choice and control. Importantly, the Royal Commission made many recommendations in relation to the aged care workforce, including calling for registration as well as better training and higher pay for workers. Restrictive practices, and particularly the prevalence of chemical restraint, was another area identified as being in need of reform.

The Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021 was introduced into the Commonwealth Parliament on 27 May 2021, and was passed on 24 June 2021. The Explanatory Memorandum to the Bill described it as the first stage of aged care reform in response to the Aged Care Royal Commission's final report. The Bill has made amendments to Commonwealth aged care legislation, particularly in the area of restrictive practices, and the changes commenced on 1 July 2021. The new laws create stronger obligations on residential aged care providers to ensure that restrictive practices are only used as a last resort, are recommended by a health practitioner or behaviour support specialist and are documented, and that informed consent is obtained.

New specialist units in South Australia

From a South Australian perspective, there were developments in the area of specialist support for people with the most severe and extreme behavioural and psychological symptoms of dementia. The need for services such as those provided in Northgate House in northern Adelaide was identified as part of the Oakden Oversight Committee review of older people's mental health services and will assist in meeting the needs of people with very complex presentation.

The Neuro-Behavioural Unit (NBU) at the Repat Health Precinct in southern Adelaide opened in February 2021. The unit provides care for people with dementia whose needs and behaviours are complex. This is a highly specialised service providing 18 care places for people living with dementia who experience very severe to extreme behaviours associated with behavioural and psychological symptoms of dementia. The care places are divided into 3 pods with 6 consumers in each (currently 12 places of care are open). People stay in the Repat NBU until their symptoms improve and they no longer need the specialist care

offered by the service. People may then transfer to a residential aged care facility or specialist dementia care unit.

The Specialised Advanced Dementia Unit at the Repat was opened in late 2020 and cares for patients with complex dementia. The service was developed using the latest evidence and consumer input and is based on a small house model, with 2 pods of 6 beds each, incorporating dementia-enabling principles in a nurturing home-like environment to support and empower people living with dementia to live life as independently as possible. The Specialised Advanced Dementia Unit will form part of the excellence in dementia care provided on the Repat site, surrounded by providers such as Hammond Care's dementia village, community dementia services and links with universities. Some key features and benefits of the new 12-bed acute dementia specialist facility include supported way-finding, single rooms, continuous paths of movement, on-ward commercial kitchen, specialised sensory rooms, open spaces, gardens, acoustic panelling and a home-like aesthetic.

On 18 June 2021 the Public Advocate visited these sites, and the models of care are of a very high standard and welcoming. Further supply will assist with meeting unmet need in the future.

Unmet need in aged care

1. Restrictive practices

The OPA has previously identified that proper regulation of restrictive practices and the need to adopt the use of positive behaviour support assessments and plans was resulting in unmet need for people with impaired decision-making capacity receiving aged care services. The use of restrictive practices in aged care is clearly an area that is undergoing significant reform at the Commonwealth Government level. This includes the preparation of high-quality behaviour support plans for people receiving aged care services. As a result there are reforms planned to be introduced in July 2021 pursuant to the recently approved *Aged Care and Other Legislative Amendment (Royal Commission Response No. 1) Bill 2021*.

In South Australia, legislation has been enacted to change and improve the process of authorisation of restrictive practices for NDIS participants. Whilst there is no legislation in South Australia which applies to authorisation of restrictive practices in aged care, there will be two separate systems operating in effect in South Australia depending on what type of Commonwealth funded care people are receiving.

2. Receiving necessary care at home

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

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The OPA has reported for consecutive years that the delay in receipt of home care packages can sometimes lead to people having to enter residential aged care prematurely, and often against their wishes, because it is not safe to remain or return home without a home care package. In these situations, the OPA often has to consent to a residential aged care placement as the next most appropriate option to ensure that the person is properly cared for and supported.

Recommendation 39 of the Aged Care Royal Commission stated that people should be able to 'age in place' more readily by clearing the home care package waiting list. The Royal Commission recommended that this be achieved by immediately increasing the availability of home care packages and providing a package to all people currently on the waiting list at the level that they have been approved, and to keep the list clear by allocating packages to new entrants within one month of the date of their assessment.

3. End of life and palliative care

In 2020–21, the OPA provided feedback to the Palliative Care Experience Survey, developed by the Commission on Excellence and Innovation in Health to inform the development of a Statewide Palliative Care Services Plan 2021–2026. The OPA took this as an opportunity to reflect on its experiences in this area, particularly in its unique role as guardian for many people with impaired decision-making capacity who reach the end of life and who may require palliative care.

The OPA has found that, generally, medical professionals at treating hospitals are careful to consult with the OPA (as guardian) on behalf of patients in end-of-life or palliative care planning. This includes supporting requests from the OPA to obtain a second opinion in some cases. However, at times decisions can be made without attempts to consult or communicate with the patient and consider their wishes, particularly if there is no formal advance care directive in place.

To ensure clients play an active part in considering or influencing end-of-life care planning and transition to palliative care, medical and palliative care teams should consult with and seek the views of patients and their substitute decision-maker/s (under guardianship orders, advance care directives or 'persons responsible' under the *Consent to Medical Treatment and Palliative Care Act 1995*) before any change is made to the end-of-life plan, 7 Step Pathway or provision of care.

The OPA submitted that end-of-life planning should incorporate the following:

- effective communication between medical teams, disability/aged care providers and guardians/decision-makers;
- clear and consistent understanding and recording of reasons for change of care or transition to palliative care;

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- decisions that take into account patient wishes wherever possible and consultation with guardians/decision-makers to ensure this occurs
- the belief that quality of life is unique to a person and that decisions should not be based on assumptions related to a disability diagnosis.

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. greater alignment of the regulation and authorisation of restrictive practices for people receiving aged care and NDIS services
2. amendments to South Australian legislation on the authorisation of restrictive practices in aged care, so that it aligns with the new South Australian legislation governing restrictive practices for NDIS participants
3. market expansion in the areas of suitably trained positive behaviour support specialists who have training/expertise in dementia and the needs of older people
4. adoption at the Commonwealth level of recommendation 39 of the Aged Care Royal Commission, to provide prompt access to home care packages for people who need them
5. recognition, greater use and funding for the role of supported decision making in assisting older people to access services and plan for their future care that accord with their wishes and preferences
6. ongoing supply of specialist dementia care services such as those at the Repat site, the Specialised Advanced Dementia Unit and the Neuro-Behavioural Unit

Safeguarding adults

Adult Safeguarding Unit

The *Office for the Ageing (Adult Safeguarding) Amendment Act 2018* establishes an Adult Safeguarding Unit (ASU) within the Office for Ageing Well, SA Health. The ASU is responsible for: receiving, assessing and investigating reports related to the suspected abuse of vulnerable adults; referring matters to other organisations, as appropriate; coordinating multi-agency, multidisciplinary responses to support vulnerable adults in response to reports of suspected abuse, including appropriate follow up; and collating data and providing advice to the minister and others. The unit is guided by a Charter of the Rights and Freedoms of Vulnerable Adults, developed to ensure a human rights-based approach to providing safeguarding support, tailored to the needs and wishes of people experiencing abuse or neglect.

The Adult Safeguarding Advisory Group meets three times a year and has responsibility for promoting and advocating for the rights and interests of vulnerable adults, promoting their participation in decisions that affect them, and promoting prevention and early intervention strategies. The OPA is represented on the Advisory Group. The Office for Ageing Well retains policy responsibility for the Strategy to Safeguard the Rights of Older South Australians and the associated action plan, including elder abuse prevention and awareness raising.

The OPA is also represented on the Interagency Phone Line and Adult Safeguarding Unit Implementation Workgroup. This group meets every three months and provides a forum for the Office for Ageing Well and key external service providers to engage regarding the Abuse Prevention Phone Line and referral pathways. The group also provides advice on the development of processes to operationalise the ASU to optimise safeguarding outcomes.

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

The service assists vulnerable persons aged 65 years or over, or 50 years and over for Aboriginal and Torres Strait Islander people, and adults over the age of 18 years with a disability who are NDIS participants. From 1 October 2022, it will assist any adult vulnerable to abuse, regardless of age.

Alliance for the Prevention of Elder Abuse (APEA)

The OPA, the Public Trustee (PT), Legal Services Commission, South Australian Police and Aged Rights Advocacy Service 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 produced publications including *Safeguard your Finances*, *Appointing an Enduring Power of Attorney*, *The Duties and Responsibilities of Your Enduring Power of Attorney*, *Appointing a Substitute Decision Maker*, *Duties and Responsibilities of Substitute Decision Makers*, *Witnessing Documents* 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

National Disability Insurance Scheme (NDIS) Mainstream Capacity Building funded project Living My Life.

The South Australian Health and Medical Research Institute (SAHMRI) and the OPA were successful in obtaining an NDIS grant for \$1.28 million to undertake a 'Living My Life' project. The aim is to document OPA clients' wishes using supported decision-making practices/principles and the Living My Life documents.

This project has been funded by the Commonwealth Community Grants Hub, on behalf of the National Disability Insurance Agency (Mainstream Capacity Building Program). SAHMRI partnered with the OPA and the South Australian Department of Health and Wellbeing (DHW). The participants include persons under the guardianship of the Public Advocate who have disability including impaired decision-making ability and their family and carers.

This project has three components:

1. To build the capacity of OPA clients to assist them to express their life choices/goals/wishes, including future healthcare wishes, using supported decision-making practices. A newly developed *Living My Life* whole-of-life planning tool will be developed to document client wishes/choices/life goals. *Living My Life* is not a legal document but is based on the principles of the *Advance Care Directives Act*.
2. To provide access for participants and their support network (families, workers and carers) to the SAHMRI Wellbeing and Resilience *Be Well* Training. The purpose of this training is to build the capacity of the participants to better support the person with a disability to exercise choice and control, including access to mainstream health services, in accordance with the principles of the NDIS.
3. To enhance the supported decision-making practice framework within public health services including the utilisation of the My Health Information form (developed by SA Health & Wellbeing). This is in the context of the importance placed in hospital settings on patients as partners in their own care, to the extent they choose (National Safety and Quality Health Service Partnering with Consumers and SA Health Framework for Active Partnerships with Consumers and Community).

This project is supported by a Governance Group, a Reference Group, a Health Interface Group and an OPA Internal Working Group.

Restrictive Practices Project

As reported in consecutive annual reports, the OPA has experienced an increased focus on restrictive practices as a result of increased regulation of restrictive practices for NDIS participants and due to a decision of the Full Court of the Supreme Court of South Australia in 2019 which related to detention of people with impaired decision-making capacity.

The OPA responded to this situation by establishing a project delivered by a small specialist guardianship team. The goal of the project was to streamline internal practices for authorisation of restrictive practices proposed to keep guardianship clients safe.

The project achieved the following outcomes in 2020–21:

- established a consistent process for assessment, authorisation and documentation of restrictive practices by the OPA
- worked closely with the NDIS Quality and Safety Commission Behaviour Support Team (South Australia) to deliver information and education to the disability sector about restrictive practices
- reviewed guardianship orders for all of the OPA's clients and applied to the SACAT for variations of order and/or for special powers orders of detention to properly authorise restrictive practices.

The OPA will extend the project for at least the first half of 2021–22 to manage the change in restrictive practices authorisations for NDIS participants (following the implementation of the changes to the *Disability Inclusion Act 2018*) and to manage the changes to regulation of restrictive practices in residential aged care.

Business Improvement/Projects

COVID-19 working environment

The OPA continues to work between the office and home environment in accordance with government restrictions or lockdown requirements.

The OPA has transitioned to using Microsoft Teams along with other media platforms to allow staff to call, video conference and join webinars to undertake their duties. Staff are equipped with mobile technology to allow a flexible working approach. Utilising modern technology has allowed the office to continue to perform the functions required to support our clients.

Organisational reporting: Development of a data dashboard

The Public Advocate recognises the value of quality and timely data to:

- support and inform the delivery of services
- planning for future business needs and
- support evidence-based decision making.

The OPA commenced a project in early 2020 to develop an automated suite of reports for key performance indicators and other organisational activity.

An initial set of reports was produced in October 2020. In April 2021, the OPA collaborated with the Attorney-General's Department Performance and Business Services to further develop the reports into a detailed data dashboard.

The initial version (Stage 1) of the dashboard is expected to move into production for use by OPA management in July 2021. The dashboard will provide a more efficient process for generating organisational reports and assist to identify gaps in the current collection, reporting and analysis of data. Stage 2 will include further enhancement to the dashboard based on user feedback and identifying other measures to support future planning and decision making.

Engagement

Meetings

In 2020–21 the Public Advocate met with key ministers to discuss systemic issues impacting on OPA clients. 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:

- restrictive practices
- adult safeguarding
- Safeguarding Task Force
- Disability Royal Commission
- mental health services
- OPA/SAMRHI research project
- supply of supported accommodation for people with complex needs
- COVID-19 detention and consents and
- the review of the *Advance Care Directives Act 2013*.

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 met twice in 2020–21. This year, AGAC meetings considered the impact of COVID-19 on the operations of council members and delivery of services to the community. AGAC meetings have continued to inform systemic advocacy and strategic policy development, particularly in the areas of national reforms to enduring powers of attorney, restrictive practices, safeguarding adults and supported decision making.

Written submissions

The Office of the Public Advocate also makes submissions on issues that are relevant to the clients of the OPA and proposed legislative and systemic changes that impact on the function of the OPA. During the 2020–21 financial year the Public Advocate made the following submissions:

- submission to the South Australian Law Reform Institute on the Operation of Powers of Attorney in South Australia
- submission – Draft Consent to Medical Treatment and Palliative Care (Restrictive Practices) Amendment Bill 2020
- proposed changes to the *Advanced Care Directives Act 2013* and the recommendations identified in the 2019 Lacey Review
- National Register of Enduring Powers of Attorney Public Consultation Paper (with AGAC)
- State-Wide Palliative Care Services Plan 2021–2026
- NDIS Restrictive Practices Authorisation Consultation
- response to new rules about restrictive practices in South Australia (amendments to the *Disability Inclusion Act 2018*)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Issues paper – Safeguards and Quality
- submission to the National Disability Insurance Agency – Consultation papers for how the NDIS works for 7–65-year-olds (Independent Assessments and Access and Eligibility)
- response to Evidence (Vulnerable Witnesses) Amendment Bill 2020
- National Disability Strategy Consultation
- proposed changes to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act)
- September 2020 – DHS COVID-19 SIL Operational Response Plan
- NDIS Support Coordination Review
- NDIS Psychosocial Disability Recovery-Orientated Framework – consultation paper.

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*:

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

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

Other applicable legislation

Advance Care Directives Act 2013 and Regulations (SA)

Aged Care Act 1997 (Cth)

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

COVID-19 Emergency Response Act 2020 (SA)

Criminal Law Consolidation Act 1935 (SA)

Disability Inclusion Act 2018 (SA)

Mental Health Act 2009 (SA)

Mental Health Regulations 2010 (SA)

National Disability Insurance Scheme Act 2013 (Cth)

Office for the Ageing (Adult Safeguarding) Amendment Act 2018 (SA)

Powers of Attorney and Agency Act 1984 (SA)

Problem Gambling Family Protection Orders Act 2004 (SA)

Wills Act 1936 (SA)

Appendix 2: List of acronyms

ACD	Advance care directive
AGAC	Australian Guardianship and Administration Council
AGD	Attorney-General's Department
AO	Authorising Officer
APEA	Alliance for Prevention of Elder Abuse
ASU	Adult Safeguarding Unit
CALD	Culturally and linguistically diverse
CVS	Community Visitor Scheme
DHS	Department of Human Services (SA)
DHW	Department for Health and Wellbeing (Commonwealth)
DRS	Dispute Resolution Service
EWG	Expert Working Group
HASP	Housing and Support Partnership
NBU	Neuro-behavioural unit
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Q&SC	National Disability Insurance Scheme Quality and Safeguards Commission
OAW	Office for Ageing Well
OPA	Office of the Public Advocate
PT	The Public Trustee
SACAT	South Australian Civil and Administrative Tribunal
SAHA	South Australian Housing Authority
SAHMRI	South Australian Health and Medical Research Institute
SC	Support Coordinator
SDA	Specialist disability accommodation
SDM	Substitute decision-makers
SIL	Supported independent living
SRF	Supported residential facility
YPIRAC	Younger people in residential aged care

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 2020–21
Agency performance management and development systems	Refer to the AGD Annual Report 2020–21
Work health, safety and return to work programs of the agency and their effectiveness	Refer to the AGD Annual Report 2020–21
Work health and safety and return to work performance	Refer to the AGD Annual Report 2020–21
Fraud detected in the OPA	Number of instances: 0
Strategies implemented to control and prevent fraud	Refer to the AGD Annual Report 2020–21
Whistle-blowers' disclosure	Refer to the AGD Annual Report 2020–21
Executive employment in the agency	Refer to the AGD Annual Report 2020–21
Summary of complaints by subject (table)	Refer to the AGD Annual Report 2020–21
Complaint outcomes (table)	Refer to the AGD Annual Report 2020–21