



Annual Report

2014-15



About this report

This annual report provides information about the Office of the Public Guardian's non-financial performance for 2014–15. The report records our achievements in protecting the rights, interest and wellbeing of vulnerable Queenslanders, in particular adults with impaired capacity, relevant children, and children staying at a visitable site.

The report is a key accountability document and the principal way in which we report on our activities to Parliament and the Queensland community.

Electronic copies of this report are available at <http://www.publicguardian.qld.gov.au> or printed copies of the report are available on request.

Feedback

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The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for Training and Skills
State Law Building
Brisbane QLD 4000

Dear Attorney-General,

I am pleased to present the inaugural Annual Report 2014-15 for the Office of the Public Guardian.

On 1 July 2014 the Office of the Public Guardian commenced operation following implementation of recommendations from the Queensland Child Protection Commission of Inquiry. The role of the office is to promote and protect the rights and interests of adults with impaired capacity for a matter and children and young people in the child protection system.

I certify that this Annual Report complies with the detailed requirements set out in the *Annual report requirements for Queensland Government agencies*. The OPG is not considered a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Yours sincerely

A handwritten signature in black ink that reads 'Julia Duffy'.

Julia Duffy
Acting Public Guardian

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Public Guardian's message

I am honoured to be able to present the first Annual Report of the newly established Office of the Public Guardian (OPG) for the year 2014-15. The year has been a challenging one for the OPG, but also one of substantial achievements.

On 1 July 2014 the role of the former Office of the Adult Guardian was amalgamated with some functions of the former Commission for Children and Young People and Child Guardian to form the Office of the Public Guardian.

Throughout this transition, the OPG has continued to service adults with impaired decision-making capacity as required and empowered under the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* and now the new *Public Guardian Act 2014*. As did the former Office of the Adult Guardian, the OPG works to protect the rights and interests of adults with impaired decision-making capacity and in so doing implements internationally recognised obligations under the United Nations *Convention on the Rights of Persons with Disabilities*.

Specifically, in respect of adults with impaired decision-making capacity the OPG has power to:

- make personal, health care and accommodation decisions when the Public Guardian is their guardian or attorney
- investigate allegations of abuse, neglect or exploitation
- make representations to accommodation and service providers for the benefit of the adults
- support the adult in navigating the criminal justice, family law and child protection systems
- educate the general public on the statutory guardianship system.

For children, the OPG has a role to provide that the rights of children in the Queensland child protection system are upheld in accordance with international obligations in the United Nations *Convention on the Rights of the Child*. Under the *Public Guardian Act 2014* the Public Guardian has the obligation to ensure that the voices of these children are heard in critical decisions that affect their lives, particularly in the Queensland Civil and Administrative Tribunal (QCAT) and court systems.

The OPG also administers a community visitor program across both its adult and child functions. This year, significant work has been undertaken to amalgamate what were previously two programs across two sets of functions.

In servicing its adult clients, the OPG has achieved efficiencies by ensuring that those clients who require active management are serviced by their regional office – South Brisbane, Ipswich, Townsville or Cairns while others with more stable needs are managed from Brisbane. We have also established a specialised team of guardians who make decisions relating to restrictive practices – i.e. those practices which if not regulated by legislation would constitute an assault or trespass under the general law. This means that a consistent and expert approach is assured in this particularly intrusive area of decision-making.

However, the most significant changes have occurred in the child visiting program which, in line with recommendations of the Queensland Child Protection Commission of Inquiry (Child Protection Inquiry), has been remodelled to focus on those children who are the most vulnerable. This has meant that resources have been channelled into the child advocacy program, also newly established to implement recommendations of the Child Protection Inquiry.

Significant developments in child protection service delivery include: the establishment of a new child advocacy hub in Cairns in February 2015; increased office support for regional visiting managers who previously worked from home; the establishment of a Statewide Virtual Hub whereby any child can contact OPG using phone, email or social media; the recruitment of seven lawyers as child advocacy officers in Brisbane and the regions and the establishment of the new positions of Deputy Public Guardian and Official Solicitor.

The significant achievements of the OPG in the past year, as set out in this report, both in the adult and child spheres means that the Office is well placed to meet the challenges going forward.

On the child protection side while there are lower numbers of children entering the system, the latest data shows that they are staying in the system longer. In Queensland, and in Far North Queensland in particular, Aboriginal and Torres Strait Islander children and young people are over represented in the child protection system, and the goal of ensuring that families in these communities are supported to nurture their children presents complex challenges in service delivery across multiple agencies.

In the guardianship sphere, with the ageing population there has been a significant increase in the number of appointments. This is expected to increase yet again with the advent of the National Disability Insurance Scheme (NDIS) in Queensland, commencing in 2016. The OPG welcomes the NDIS as an opportunity for increased service delivery to those who have to date not qualified for government support. The philosophy and principles of the NDIS are commendable in empowering those with disabilities to make the kinds of decisions and choices that are freely available to those in the wider community. However this will be challenging for adults with impaired decision-making capacity and the OPG is therefore actively engaged with the NDIA and relevant State agencies to ensure that the development of adequate safeguards and advocacy services are available for this particularly marginalised client group.

Finally, I would like to congratulate the OPG's committed and untiring workforce. As described above and later in this Report, the year has been one of challenge, but also of achievement. The work of our guardians, investigators, lawyers and visitors requires expertise, tenacity and dedication. I commend them for their ongoing work and professionalism, their commitment to their clients and to the values of public service.

I would also like to take the opportunity to acknowledge the work and career of Mr Kevin Martin, the now retired Public Guardian who led the Office through 2014-15, and the preceding two years as Adult Guardian following a long and extensive career in the Public Service and non-government sector. His commitment to universal human rights was evident to all who dealt with him and his legacy is one which will be felt for many years.

It is a privilege for me to be Acting Public Guardian at this time, and I look forward to being part of the leadership team in the coming year.

A handwritten signature in black ink that reads 'Julia Duffy'.

Julia Duffy
Acting Public Guardian

Executive management 2014-15

Kevin Martin

Public Guardian



Kevin Martin was appointed Public Guardian on 1 July 2014, after having been in the role of Adult Guardian since 13 August 2013.

Kevin has had an extensive career across many areas of public administration, legal policy formulation, legislative enactment and implementation. During his career, Kevin has held multiple executive and senior management positions in which he has been responsible for both the delivery of front line services and corporate support services. His significant executive management experience has had a strong emphasis on leadership within the Queensland Government, including key roles as Assistant Crown Solicitor (1980-1982), Deputy Under Secretary Department of Justice (1987-1989), Parliamentary Counsel of

Queensland (1989-1990), Public Trustee of Queensland (1990 – 1996), and the Director General Department of Justice and Attorney General 1996 -1998).

During his career Kevin has demonstrated a long term interest in the promotion of human rights. He has had widespread involvement in areas of intergovernmental relations within Australia, including involvement in the ratification by Australia of the United Nations International Covenant on Civil and Political Rights, and the establishment of the first Australian Human Rights Commission. He also attended as the States Representative on the first report by Australia to the United Nations Human Rights Committee in Geneva.

Kevin holds a Bachelor of Commerce, Bachelor of Arts, and Master of Laws from the University of Queensland. Kevin is also admitted as a Barrister in the Supreme Court of Queensland.



Julia Duffy

Deputy Public Guardian

Julia Duffy was appointed the Deputy Public Guardian on 23 June 2015.

Julia has over 16 years' experience in the Queensland Public Sector. During her public service career she has held executive and senior management positions in the areas of legal policy development, legislative reform, and corporate and financial governance.

Julia's recent roles have included the position of Executive Director and Official Solicitor of the Queensland Child Protection Commission of Inquiry in which she was responsible for the project management, and oversight of the development of the final report for the Inquiry.

Julia has for some time demonstrated a keen interest in human rights issues. She has been awarded a Master of Arts with a concentration in Women's Studies from the City University of New York, and a Master of Law (Cambridge), in which she completed several subjects on Public Law and the *Human Rights Act 1998* (UK). More recently, she has been a member of a board for a not for profit organisation delivering women's health services to disadvantaged sectors of the community.

The year in review

The Child Protection Inquiry

The Government committed Queensland to a fundamental reform of the whole of the Child Protection System in Queensland following acceptance of the Child Protection Inquiry recommendations. The inquiry conducted a far reaching review of the effectiveness of Queensland's child protection system, including its oversight mechanisms and made recommendations for change. The inquiry concluded that the existing system was not ensuring the safety, well-being and best interests of children as definitively as it could and made 121 recommendations to improve Queensland's child protection system.

There has been an extensive whole of Government response to these reforms, with the creation of the OPG as one aspect of the overall reform process.

Recommendations 12.7¹ and 12.8² were accepted in full by the Government and led to the establishment of the OPG on 1 July 2014. At that time, the Office of the Adult Guardian and the Adult Guardian were abolished and they became part of the newly formed OPG. The OPG now carries out the adult guardian and adult community visitor functions for adults with impaired capacity, as empowered under the *Public Guardian Act 2014* and *Guardianship and Administration Act 2000*. At the same time, the OPG was also empowered to oversee the child protection system, and advocate for individual children through a child community visitor and child advocacy function by:

- promoting and protecting the rights and interests of children and young people
- ensuring the voices of children and young people are heard
- assisting children and young people to understand the child protection system and resolve disputes
- ensuring children and young people are involved in making decisions that affect their care
- working with service providers to promote and protect the interests of children.

Amalgamation of offices

The official commencement of the OPG on 1 July 2014 saw the physical drawing together of two separate offices, combining roles previously undertaken by the Office of the Adult Guardian, and the child community visitor function of the former Commission for Children and Young People and Child Guardian (CCYPCG). This amalgamation of offices saw significant changes in the role of the child community visitor (child visiting) program, and heralded the commencement of a child advocacy service designed to operate across the state.

Prior to 1 July 2014 the objective of the child visiting program had been to visit all children in out-of-home care, with the preparation of detailed reports following each visit. The Child Protection Inquiry raised concerns with the efficiency and effectiveness of this oversight, and recommended that the child visiting program be re-focused on visiting children in out-of-home care whose needs were greatest. The visiting function should also be complemented by a new child advocate function.

¹ Queensland Child Protection Commission of Inquiry (Child Protection Inquiry) *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013 available at <http://www.childprotectioninquiry.qld.gov.au/publications>, Recommendation 12.7 "That the role of the Child Guardian be refocused on providing individual advocacy for children and young people in the child protection system. The role could be combined with the existing Adult Guardian to form the Public Guardian of Queensland, an independent statutory body reporting to the Attorney-General and Minister for Justice"

² *Child Protection Inquiry*, Recommendation 12.8 "That the role of Child Guardian – operating from statewide 'advocacy hubs' that are readily accessible to children and young people – assume the responsibilities of the child protection community visitors and re-focus on young people who are considered most vulnerable"

The Child Protection Inquiry stressed the need for more effective advocacy for a child in the child protection system. As provided for in the *Public Guardian Act 2014*, the OPG has recruited several child advocates to attend at court or QCAT related meetings to ensure that the voice of the child is effectively heard in decisions impacting upon them.

The OPG, as part of its child advocacy function, has also established a Statewide Virtual Hub whereby any child or young person can contact OPG using modern electronic communication tools including social media. This provides any child or young person, even those not in out-of-home care, with the ability to contact the OPG with issues of concern. Where a child who is not a client of OPG contacts the OPG, they are referred to a relevant agency to address their concerns.

In addition to the physical moves, work began to identify ways of bringing together the information technology systems. The client information systems inherited from the Adult Guardian and the CCYPCG are each based on separate aging systems and work has commenced to transform these into a contemporary model to facilitate the use of up to date mobile technology.

Guardianship

The opportunity has been taken during 2014-15 to reorganise the way in which guardianship services are delivered to clients. Clients requiring active management of their affairs are now serviced by guardianship teams based in Brisbane CBD, South Brisbane, Ipswich, Townsville and Cairns.

There are many factors driving the increase in guardianship appointments, some of these are:

- aging populations with increases in diagnoses of capacity affecting illnesses
- greater awareness of the importance of putting in place effective management regimes for later years
- increased difficulties faced by the parents of intellectually disabled children who find the management of the affairs of their children more challenging as they age
- the institution by the Commonwealth of a new self-funding regime for the provision of aged care placements, necessitating complex legal contracts and often liquidation of major assets such as the family home
- a more active community recognition of the potential for abuse of the elderly by family necessitating regulatory intervention.

During this year the opportunity was also taken to establish a Specialist Statewide Services team to address the needs of clients who are subject to restrictive practices in order to protect both the client and the community from the adverse consequences of the client's behaviour.

The restrictive practices regime provides a process for societal authorisation of actions that would otherwise constitute an assault or other criminal offence against the client. Guardians who have clients subject to the use of restrictive practices need to develop specialist skills in identifying and considering the various factors needed to be taken into account in making decision. By centralising these roles in OPG head office, a consistent and expert approach can be assured so as to protect the rights of these extremely vulnerable clients.

On 1 July 2014 amendments to the restrictive practices legislative regime took effect. The amendments provided enhanced safeguards for clients subject to the use of restrictive practices, including the emphasis on the need for a positive behavior support approach, and provided for a greater focus on client service delivery. These amendments have impacted approximately 300 guardianship clients subject to the use of restrictive practices during 2014-15.

The Statewide Services team based in Brisbane CBD also manages clients whose need for decisions on a regular basis are not as significant as other guardianship clients. The team ensures that these clients are visited and reviewed regularly.

National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) will commence in Queensland in 2016, with a full rollout commencing on 1 July. The principles underpinning the NDIS are laudable in providing people with disability with the opportunity to achieve the maximum life options, and choice and control in their disability supports. However it is anticipated that there will be enormous challenges to be addressed where the disability that affects the person relates to their capacity to make their own decisions. In anticipation of Queensland's transition to the NDIS, the OPG has engaged in preliminary preparation work to identify those clients who are potentially eligible for NDIS support. Significant work still remains to be done at a national and state level regarding the quality and safeguards that will exist to protect those with impaired capacity within the NDIS. In particular, further work needs to be done to address the potential for conflict between the NDIS system based on the right to enter into contractual relations with service providers who operate in a competitive market, and how persons with impaired capacity will be protected and supported within the NDIS.

Developing the capacity of service providers in regional, rural and remote areas of Queensland is critical. This includes recognition that in such areas where a competitive market will be difficult to establish, recognition should be given to ensuring that people with disability are not disadvantaged in these areas, and efforts should be made to ensure that standards of service (whether delivered by one service provider or several), are equal to the standard received in major metropolitan areas.

The OPG has been involved in national and state based discussions regarding the Quality and Safeguards Framework governing the NDIS, to ensure that the NDIS protects participants from neglect, exploitation and abuse, particularly by service providers. It is essential that the NDIS has robust systems to regulate not only service providers, but also staff they employ in order to ensure protection of those clients who are most vulnerable, and unable to speak out for themselves.

The OPG has inherited a tradition of strong and effective community oversight of the delivery of disability and other services in Queensland, through the adult community visitor program. It is essential that any National Quality and Safeguards Framework ensures that vulnerable Queenslanders continue to be protected from abuse, neglect and exploitation by service providers under the NDIS, through the continuation of a robust and professional community visitor program.

Ageing population and growth of guardianship

The steady long term increase in the number of appointments of the OPG as guardian continues unabated. There may be a number of reasons for this. First, medical science is keeping people alive longer, but the person's intellectual capacity may not keep pace with their physical condition. Second, the incidence of illnesses such as dementia is becoming more common as people age. Further the growth of wealth in the community, particularly through property assets, is creating increased tensions between generations which increases opportunities for financial abuse of the elderly by their adult children, as well as tensions and disagreements between those children.

On 1 July 2014, the Commonwealth Government introduced new aged care policies which include financial changes, such as the introduction of income testing, and new accommodation payment arrangements to give

aged care residents the ability to choose between paying a lump sum, daily or combined amounts. In certain cases, large capital sums may be required for admission to aged care facilities, necessitating legal security to be provided for financial arrangements. This often requires the urgent liquidation of significant assets (such as the family home), which may disadvantage children who have been dependent upon the adult. This is particularly acute in the case of parents who have cared for a disabled child well into their adult life, without the creation of transitional arrangements to care for the disabled child when the parent no longer has the capacity to do so.

In order to meet this ongoing increase in appointments OPG has constantly sought to improve the efficiency of its guardianship services within organisational and funding constraints. However, the Queensland guardianship system is slowly changing and the challenge is to develop a new paradigm for the delivery of guardianship services. This imperative for adaptation and reform is even more urgent in light of the anticipated transition to the NDIS, and the impact that this will have upon demand for increased engagement and advocacy by guardians on behalf of current and new clients.

Engaging with our stakeholders

The delivery of child protection services is a shared responsibility between government and the non-government sector. The OPG recognises that to achieve well-coordinated and meaningful outcomes for children and young people it is important to engage collaboratively with our key stakeholders. Our aim is to assist in the development of a solid collaborative foundation to make important changes and improvements in service delivery, and build the collective capacity to achieve better outcomes for children and young people in out-of-home care.

During 2014-15 OPG prioritised regular meetings with key stakeholders. During this time OPG child visiting and advocacy officers attended over 330 meetings with external stakeholders. Over 120 of these meetings were recorded as collaborative engagement meetings while other meetings attended were child specific, for example, case planning meetings, family group meetings, or education focused. Through this active engagement with our key stakeholders the OPG has been able to identify where there are existing advocacy gaps, and potential priority groups of children and young people who may require support and assistance from our child community visitors and child advocates.

With respect to the adult visiting program, the OPG conducted 26 liaison meetings with stakeholders, which primarily sought to address the health and well-being of clients and their support needs. These meetings also followed up on adult community visitor reports made by the OPG, and responses by service providers to the issues raised.

Submissions made by the Public Guardian

The OPG has a statutory responsibility to promote and protect the rights and interests of adults with impaired capacity for a matter, relevant children and children staying at a visitable site.³ As part of this responsibility the OPG actively contributes to Queensland and Commonwealth Government public consultations which relate to our client base.

The Public Guardian has given evidence before several key Queensland and Commonwealth parliamentary inquiries. The former Public Guardian, Kevin Martin, gave evidence before the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The Official Solicitor gave evidence on behalf of the Public

³ *Public Guardian Act 2014*, s.5.

Guardian before the Senate Standing Committee on Community Affairs with respect to the Inquiry into children and young people in *Out-of-Home Care*. The Public Guardian also gave evidence before the Queensland Parliamentary Committee *Inquiry into the adequacy of existing financial protections for Queensland seniors*.

During 2014-15 the OPG has provided written submissions regarding several key consultations relevant to our client base. These are publicly available on the OPG website, and include a:

- ⦿ proposal for the NDIS Quality and Safeguarding Framework.
- ⦿ submission to the Commonwealth Senate Affairs Reference Committee *Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*.
- ⦿ submission to the Commonwealth Senate Affairs Reference Committee *Inquiry into the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*.
- ⦿ submission to the Queensland Parliament Communities, Disability Services and Domestic and Family Violence Prevention Committee *Inquiry into the adequacy of existing financial protections for Queensland seniors*.

The year ahead

Evaluating OPG's child protection reforms

One of the recommendations arising from the Child Protection Inquiry was to develop an evaluation framework to assess the appropriateness and effectiveness of the OPG in delivering the child protection reforms. The OPG commenced development of the evaluation plan during 2014-15. The evaluation has three phases, to be conducted during the second, third and fifth years of the operation of the OPG. The first phase of the evaluation process will occur during 2015-16.

The OPG is committed to an ongoing process of review, response, and evaluation. We are open to finding and developing new and innovative ways to ensure that children and young people receive the best possible services, programs and outcomes. Through these evaluation processes, the OPG will be able to better identify how we are doing in fulfilling our roles and functions. Our processes seek to ensure that the children and young people that we work with, and other stakeholders, are fully engaged in the process of ensuring that our services are continually improved and developed in accordance with best practice and outcomes.

While the OPG has existing monitoring, audit and review processes, particularly in relation to its performance, the evaluation of child protection reforms is a project designed with a specific purpose, namely, to provide a constructive critique of our new initiatives. This includes working with children and young people and other stakeholders to determine their perception of what has worked well, and what needs redirection or improvement.

The evaluation will commence in early 2016 and establish a baseline for going forward by identifying and establishing measurable outcomes. Whilst quantitative data will play a key role in this first phase of the evaluation, it is envisaged that qualitative information will be obtained from a series of surveys, interviews and focused forums. The forums will play a key role in the process by gathering information from stakeholder groups, children and young people in out-of-home care, key government and non-government agencies, as well as legal providers and carers engaged in the child protection system.

The findings from the first phase of the evaluation will be presented in an interim report, which will be made publicly available by the OPG on its website.

Re-development of client information systems

With the amalgamation of the Office of the Adult Guardian and the community visitor program from the CCYPCG, the OPG inherited two separate client information technology systems. One system has been designed for adults with impaired capacity issues, and the other system has been designed to meet the needs of the community visitor program for children in the child protection system. Both systems require upgrading to deal with both developments in the guardianship system, and the expanded role of the OPG with respect to children in the child protection system. Both systems were built for specific purposes, and struggle with their lack of flexibility to be readily varied to make them more user friendly, and stay compatible with contemporary developments in information systems and technology. With the development of mobile technology options broadly available within the community, such technology should be able to be immediately accessed from wherever the client might be in Queensland, to assist in good decision-making and information gathering.

As such, both systems require upgrading in order to make them more efficient tools to support the functions, role and objectives of the OPG. OPG has therefore commenced the process to completely redevelop its client

information systems, moving in the direction of integrating all potential information sources that might impact on an individual client to enable information to be delivered through the use of modern mobile technology across Queensland. The immensity of the task is not to be underestimated, especially in ensuring appropriate confidentiality of that information, but in the long run its achievement will ensure the best possible outcomes for the OPG's vulnerable clients.

New model for guardianship

Queensland's Guardianship regime is based upon the principles of assisted and substituted decision-making which were adopted from the 1996 report of the Queensland Law Reform Commission *Assisted and substituted decisions: Decision-making by and for people with a decision-making disability*⁴. At that time this approach represented best practice in addressing the needs of persons with capacity issues through a 'best interests' approach.

However, international standards have moved on from a substitute decision-making approach. The contemporary international standard is reflected in the United Nations *Convention on the Rights of Persons with Disabilities* which promotes the implementation of a supported decision-making model. The Australian Law Reform Commission in its report *Equality, Capacity and Disability in Commonwealth Laws*⁵ proposes a rights based approach to decision-making support. The report highlights the need for a shift in laws towards supporting a person to make their own decisions, rather than having decisions being made by others on that person's behalf. This model maximises the rights of the individual with a disability, and requires society to provide effective mechanisms to support the individual to make decisions for themselves. It is hoped that this model will allow the individual to exercise their ultimate right to individual autonomy, while receiving the support needed to assist them to make life choices.

Queensland has yet to significantly address the necessary changes in both legislation and service delivery principles that the adoption of this approach will require. Whilst the development of the NDIS is increasingly in favour of greater choice and control by persons with a disability in accessing support, there is still a long road ahead to ensure that Queenslanders with impaired decision-making capacity are provided with the opportunity and support needed to develop and maintain such decision-making skills, and what this can look like in best practice.

Whilst a supported decision-making model is a positive step forward it remains unclear how the support will be provided to individuals in practice. To this end, the OPG has committed to being an industry partner in a supported decision-making project based in Queensland, NSW and Victoria which is due to commence in 2015. The aim of the project is to develop and evaluate the efficacy of a capacity-building education program for people providing decision-making support to those with cognitive disability, in order to substantially improve the quality of support given. The desired outcome is to boost the ability of supporters of people with cognitive disability, to put the supported person's own desires and values at the centre of decisions.

⁴ Queensland Law Reform Commission, *Assisted and substituted decisions: Decision-making by and for people with a decision-making disability*, Report 49, 1996, available at <http://www qlrc qld gov au/publications>

⁵ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124), November 2014, available at <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>

Reporting on the statutory functions of the Public Guardian

Community visitor program

One of the key functions of the OPG is to protect the rights and interests⁶ of adults with impaired capacity for a matter, and relevant children⁷ and young people through the OPG's community visitor program.

The Child Protection Inquiry identified there were significant similarities between the child visiting program administered by the CCYPCG and the adult visiting program administered by the previous Office of the Adult Guardian. A key project for OPG in 2014-15 has been the transition from two separate visiting programs into one visiting program, as of 1 July 2015.

Child community visitors

Statewide child community visitor program

The *Public Guardian Act 2014* provides that one of the child advocate functions of the Public Guardian is to provide a community visitor program for the child or young person under care, staying at a visitable home, or children or young people staying at a visitable site⁸ (visitable child). Visitable sites for children or young people include the following places:⁹

- foster homes and residential facilities (such as a service funded by the Department of Communities, Child Safety and Disability Services)
- detention centres
- boot camps
- corrective services facilities
- authorised mental health services.

The child visiting program is a critical monitoring element of the child protection system. The child visiting program operates across 13 zones throughout Queensland. The zones are: Brisbane North, Brisbane South, Brisbane West, Central North, Central South, Far Northern, Gold Coast, Ipswich, Logan, Moreton and South Burnett, Northern, Sunshine Coast, and Toowoomba and Western.

Role of child community visitors

Visitable locations are required to be regularly visited by a community visitor¹⁰ and the OPG has policies for how priorities and frequency of visits for particular sites are to be determined. The *Public Guardian Act 2014* sets out certain matters for consideration by a community visitor when visiting a child or young person. These include the age of the children, the number of children in the home and the appropriateness of the home.¹¹ Other matters which are taken into consideration by child community visitors include the child's physical, emotional, educational, health and legal needs. Where issues are raised child community visitors advocate on behalf of the child for a timely resolution of matters which have been identified by the child community visitor, or raised by the child or young person.

⁶ *Public Guardian Act 2014*, s.5.

⁷ A relevant child is defined under s.52 of the *Public Guardian Act 2014*.

⁸ *Public Guardian Act 2014*, s.13(2)(a).

⁹ *Public Guardian Act 2014*, s.51.

¹⁰ *Public Guardian Act 2014*, s.58.

¹¹ *Public Guardian Act 2014*, s.57.

Child community visitors seek to work collaboratively with child safety officers, and other stakeholders to ensure that services and supports provide the best possible outcome for the child’s safety and wellbeing. Ongoing training and professionalism are key to ensuring that child community visitors are equipped and trained to the highest possible standard. Whilst many child community visitors have years of practical experience as community visitors, the OPG provides on-going training and professional development to ensure they have and maintain skills required to address the needs of vulnerable Queensland children and young people in out-of-home care.

Visiting schedules

The Child Protection Inquiry highlighted that the current child protection system in Queensland was not sustainable in the long term. While importance was placed upon the maintenance of a community visiting program, it was recommended that resources be focused upon those children/young people who were deemed most vulnerable.¹² Not all children living in out-of-home care will require regular visits from a child community visitor, however all children in out-of-home care should be empowered, and enabled, to contact a child community visitor or child advocate should they wish to do so.

The OPG aims to ensure that appropriate visiting schedules are established for all relevant children and young people, and children and young people staying at visitable sites. In addition to this, the OPG has prioritised community education to ensure that children and young people are aware of the OPG and ensure they have access to the OPG’s services.

As at the end of 2014-15 there were 6,741 visitable children known to OPG excluding those young people currently staying in adult correctional facilities, who are discussed in a separate section below. Of these, approximately 43% (2,890) identified as Aboriginal and/or Torres Strait Islander.

Figure 1: Breakdown of visiting schedules

| | | |
|-------------|----------------|---------------------------------|
| 1,744 (26%) | were on | a monthly visiting schedule |
| 1,636 (24%) | | a bi-monthly visiting schedule |
| 2,057 (31%) | | a quarterly visiting schedule |
| 958 (14%) | | a six-monthly visiting schedule |
| 156 (2%) | | an annual visiting schedule |
| 190 (3%) | | a no visit visiting schedule |

Figure 1 above sets out the visiting schedules for all visitable children known to the OPG. Priority is given to those children and young people who are deemed most vulnerable. Those most vulnerable are placed on a regular monthly visiting schedule. The least vulnerable may be placed on an annual or no visit schedule. Children or young people placed on a ‘no visit’ schedule have either requested not to receive visits from a community visitor; or are considered least vulnerable, for example, due to the on-going stability of their placement with no issues arising. Where possible, the views of the child are taken into consideration in determining a ‘no visit’ schedule.

¹² Child Protection Inquiry, Recommendation 12.8.

In 2014-15 the percentage of children visited in accordance with their visiting schedule was 84%. 16% of children were not visited as per their agreed visiting schedule due to a variety of factors which include, the community visitor being unable to contact the foster carer to arrange a visit within the reporting month, the movement of a child to another visitable location, or turnover of community visitors within a region.

During 2014-15 child community visitors conducted a total of 30,849¹³ visits to 7,642 children and young people¹⁴ in visitable sites¹⁵ and visitable homes. Of these, 3,663 visits were made to 511 different visitable sites. As at 30 June 2015, 3,527 reports had been generated from visits to visitable sites and had been provided to the Public Guardian.¹⁶

Visitable locations

Child community visitors advocate on behalf of a child by listening to, giving voice to, and facilitating the resolution of, the child's concerns or grievances.¹⁷ One of the ways a child community visitor fulfils this role is by conducting visits to relevant children who are staying at a variety of different locations.

Whilst conducting a visit to these locations child community visitors assess the needs of the child in accordance with the Statement of Standards¹⁸ set out in full in Appendix 3. In most zones across the state, children who stay at a residential facility are deemed to be one of the most vulnerable. Anecdotal evidence, as well as recent inquiries¹⁹, suggest that there are unique risk factors involved in the placement of these children. Children and young people staying at a residential service may not have access to appropriate services or supports (health and dental care, age appropriate educational needs).

These locations also include homes, externally supported accommodation,²⁰ youth detention sites, boarding schools, mental health services, boot camps, residential facilities, disability services, or a correctional service.

Figure 2 on the next page shows there were 3,578 locations²¹ for visitable children as at the end of 2014-15. Of these locations, 3,150 (88.0%) were homes and 428 (12.0%) were comprised of visitable sites. In excess of half (242, 6.8%) of the locations visited outside of homes were residential facilities. Of the remainder: 15 (0.4%) were mental health facilities; 91 (2.5%) were externally supported accommodation sites; 47 (1.3%) were disability services sites; 22 (0.6%) were boarding schools; 7 (0.2%) were Queensland Correctional Services sites; 2 (0.1%) were youth detention sites; and 2 (0.1%) were youth boot camps.

¹³ This figure was more than 10,000 lower than 2013-14 due to reduced visiting to children who were in safe and stable placements.

¹⁴ A small number of these visits (161) were to young people in youth boot camps.

¹⁵ Sites include residential facilities, externally supported accommodation, disability services, boarding schools, youth detention centres, mental health facilities and youth boot camps.

¹⁶ *Public Guardian Act 2014*, s.70.

¹⁷ *Public Guardian Act 2014*, s.13.

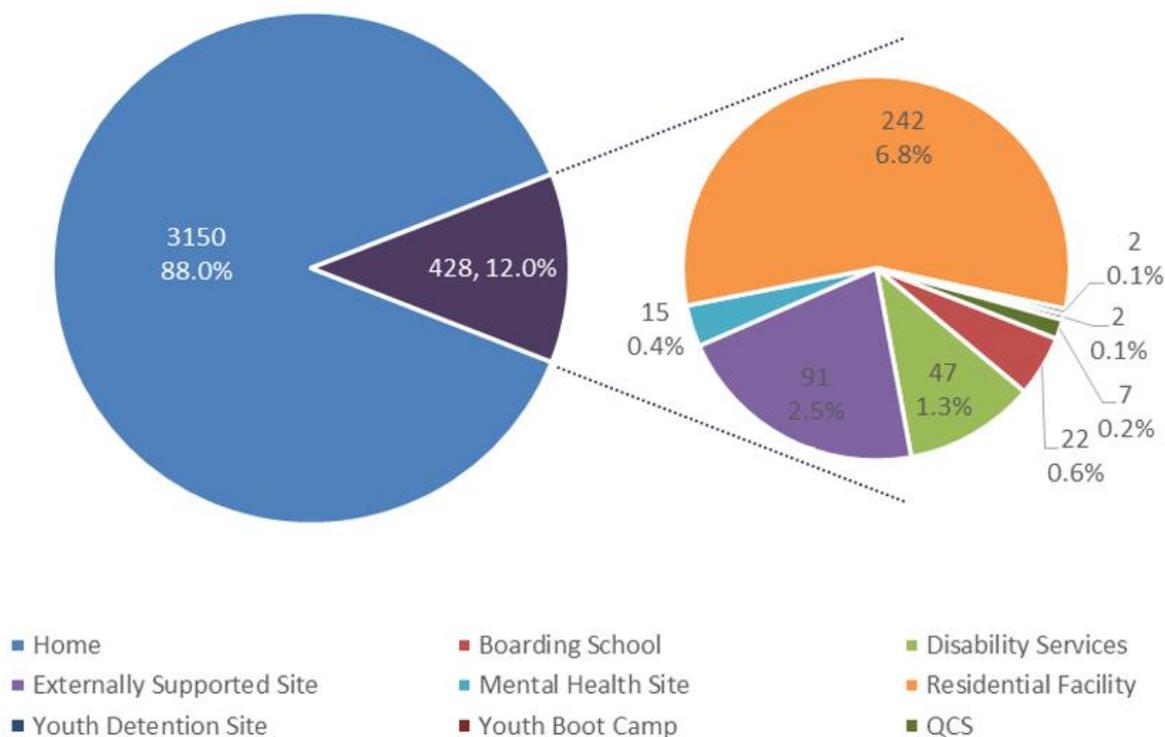
¹⁸ *Child Protection Act 1999*, s.122.

¹⁹ See the *Child Protection Inquiry*, Victorian Commission for Children and Young People, "...as a good parent would...", Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation while residing in residential care, August 2015, available at <http://www.cryp.vic.gov.au/goodparent.htm>, see also the OPG submission to the Commonwealth Senate *Inquiry into the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia* available at <http://www.publicguardian.qld.gov.au/publications>

²⁰ Externally supported accommodation includes semi-independent living where the young person lives either on their own or with others through a supported accommodation assistance program

²¹ See *Public Guardian Act 2014*, s.51 that a visitable location is 'a visitable site or a visitable home'.

Figure 2: Visitable locations, 30 June 2015



Seventeen year olds in Adult Correctional Centres

Under the *Public Guardian Act 2014* a young person remains visitable if they are visitable under the child protection system, or because they reside at a visitable site, until they turn 18 years of age.²² As such, a visitable site may include an adult correctional facility where a 17 year old may be detained.

During 2014-15, child community visitors provided 100 reports from visits to 17 years olds in adult correctional centres²³ and recorded 174 issues arising from these visits. Table 1 indicates that the 3 most common categories of issues recorded by child community visitors in order of frequency were related to: programs and services (65 issues or 37% of issues recorded); contact (46 issues or 26%); and transition into the community (19 issues or 11%).

Issues relating to programs and services, were primarily concerned with the provision of education, recreation and legal services. Concerns with contact were often related to the need for improved means and opportunity to communicate with family members, legal representatives and other persons. Issues relating to transition to the community involved primarily planning for the future, including how to manage finances and find accommodation. Anecdotal evidence suggests that many young people transitioning out of adult correctional facilities worry about how they will manage when released.

²² *Public Guardian Act 2014*, s.52.

²³ *Public Guardian Act 2014*, s.51, visitable site is considered to be a corrective service facility where the child is staying.

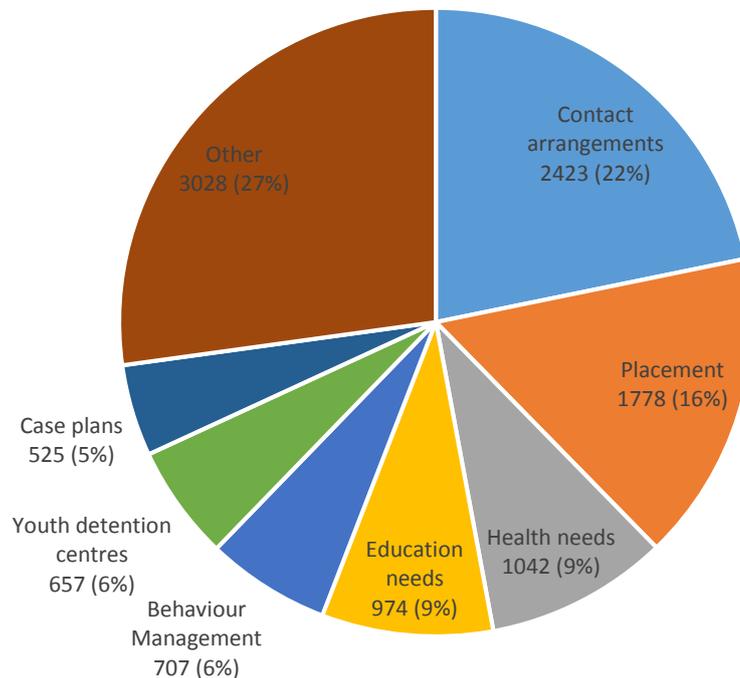
Table 1: Most common issues recorded in adult correctional centres, 2014-15

| Top 3 issue types | Number of Issues | Percentage of all Issues raised |
|--|------------------|---------------------------------|
| Programs and Services (e.g. education, legal, recreation) | 65 | 37% |
| Contact (e.g. mail or telephone, with family or others) | 46 | 26% |
| Transition to Community (e.g. accommodation, planning and finances) | 19 | 11% |

Common issues for children and young people

In 2014-15, child community visitors across the 13 zones logged 11,502 issues and closed 11,134 issues.²⁴ Figure 3 below shows the most common issue²⁵ classifications for the 11,134 issues closed. It shows that more than one fifth of issues (2,423 or 22% of issues closed) related to contact arrangements, followed by placement (1,778 or 16%), and health needs (1,042 or 9%). Of the 11,134 issues closed, the vast majority (98% or 10,872) were able to be resolved at the local level²⁶, with the remaining 2% being of a more serious nature that required higher level advocacy responses.

Figure 3: Primary issues raised by children and young people, 2014-15



²⁴ Note that a small number of these issues were generated by the OPG's statewide virtual hub.

²⁵ An issues for a child is any matter that breaches s122 of the *Child Protection Act 1999* Statement of Standards

²⁶ For the purposes of this report the phrase 'local level' means resolving the matter with the Child Safety Service Centre.

Throughout the financial year there was a significant number of issues closed that related to concerns with contact arrangements. Of these issues 40% were regarding a child or young person's contact with their parents, with 22% related to sibling contact. Of the 2,423 issues relating to contact arrangement closed²⁷ by child community visitors in 2014-15, the types were:

- 40% (981) relating to contact with parents
- 22% (521) relating to contact with siblings
- 21% (505) relating to contact with Child Safety Officer
- 12% (288) relating to contact with extended family
- 5%²⁸ (128) relating to contact with other parties.

Child community visitors closed a total of 1,778 issues relating to the placement of a child or young person in 2014-15. The primary issues of concern related to the conditions and suitability of the placement, stability, and decision-making regarding the placement of the child or young person. The OPG has consistently supported and advocated for children and young people to be provided with safe, secure and supportive placements. Of the 1,778 placement related issues closed by child community visitors in 2014-15, the types were:

- 33% (590) relating to conditions
- 25% (437) relating to suitability
- 23% (414) relating to decision-making
- 15% (258) relating to stability
- 4% (79) relating to other placement issues.

Health needs for children and young people are regularly raised by child community visitors. Many health issues closed by child community visitors were able to be resolved at the local level.²⁹ Of the 1,042 health related issues closed by child community visitors in 2014-15, the types were:

- 54% (566) relating to medical health
- 22% (228) relating to mental health
- 16% (168) relating to dental health
- 6% (67) relating to sexual health
- 1% (13) relating to other health issues.³⁰

Education needs for children and young people are regularly raised by child community visitors. Educational Support Plans are a critical issue often identified by child community visitors. Of the 974 education related issues closed by child community visitors in 2014-15, the types were:

- 47% (453) relating to services and support
- 24% (229) relating to Education Support Plans
- 9% (83) relating to bullying
- 8% (79) relating to attendance
- 13% (130) relating to other education issues.³¹

²⁷ OPG policy stipulates that an issue is closed when the matter has been resolved to the satisfaction of the community visitor program

²⁸ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. This is due to the difference between the calculated approximation of the number and its exact mathematical value due to rounding.

²⁹ For the purposes of this report the phrase 'local level' means resolving the matter with the Child Safety Service Centre.

³⁰ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

³¹ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

Case Study: Taylah

Taylah³² is a 15 year old girl living in out-of-home care. She was suspended from school due to public comments that she made on her personal Facebook page. The comments referred to an incident which had occurred at the school. Several of her classmates also wrote on the Facebook page with similar comments, but were not punished by the school.

Taylah was very distressed over the suspension. She had only recently realized that obtaining an education was the most important aspect in order to overcome the disadvantage suffered by her family of origin. The girl wants to pursue an apprenticeship and had just been accepted into a school-based TAFE program (1 day per week), as a pre-apprentice. The suspension would result in her being removed from the program.

The Community Visitor understood how serious this was and quickly engaged her manager in seeking advice as to how to best help Taylah. This led to the child advocate being brought in to assist Taylah in resolving the matter at her school. The child advocate quickly arranged for a meeting to be held with the school principal. As a result of the quick referral process by the child community visitor and the work of the child advocate, the principal of the school reviewed his decision and Taylah returned to school without missing any classes and re-commenced her TAFE based pre-apprenticeship program.

Children and young people with disability

Queensland will commence transition to the NDIS in 2016. A child or a young person with an impairment that is likely to be permanent, or who can satisfy the early intervention requirements of the NDIS may be eligible for funding for disability supports under the NDIS. Visitable children with disability will need to be appropriately and effectively connected with, and supported, in order to engage with the NDIS.

Table 2 Children in care by age and disability status, 30 June 2015

| Age group | Yes | No* | Total | % with a disability |
|--------------|--------------|--------------|--------------|---------------------|
| 0 to 4 | 106 | 1,512 | 1,618 | 6.6% |
| 5 to 9 | 458 | 1,607 | 2,065 | 22.2% |
| 10 to 14 | 6,31 | 1,480 | 2,111 | 29.9% |
| 15 to 17** | 300 | 641 | 941 | 31.9% |
| Unknown | 0 | 6 | 6 | 0.0% |
| Total | 1,495 | 5,246 | 6,741 | 22.2% |

* Includes not stated/unknown

** Includes a small number of children who had recently turned 18

Table 2 above shows that of the 6,741 children in out-of-home care as at the end of 2014-15, approximately 22% have been identified as having a disability.³³ The highest rate of disability by age group was the 15 to 17 year age group, with 31.9% identified as having a disability.

³² The name of the young person has been changed.

³³ A disability as defined under s.11 of the *Disability Services Act 2006* 'is a person's condition that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of impairments and results in a substantial reduction of the person's capacity for communication social interaction, learning, mobility or self-care or management and the person needing support.'

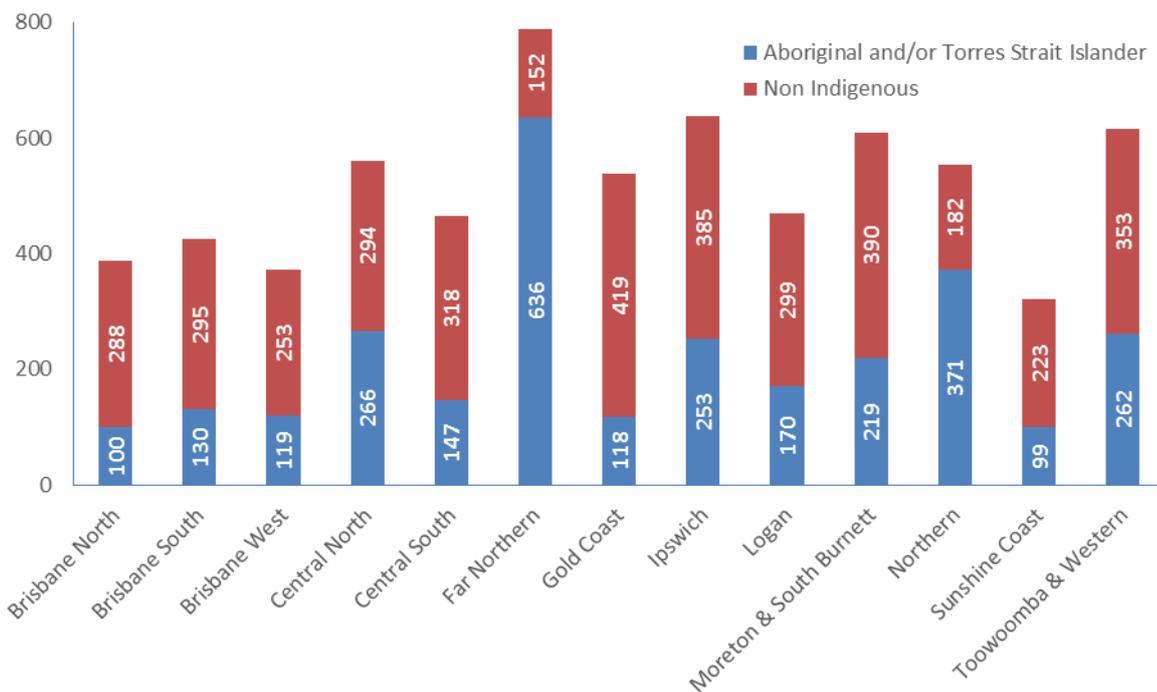
The OPG welcomes the introduction of the NDIS and the positive support it will provide vulnerable Queenslanders. While the 15 to 17 years age group has the highest percentage of placed children who have a disability under the NDIS it is likely that early intervention strategies may see increases in identified disabilities in the younger age groups.

Early intervention under the NDIS for children and young people will be available to those who do not necessarily have a finding of ‘permanent disability’ as is currently required under Queensland based disability legislation. This should mean that more children and young people are identified with disability support needs from an early age. This data highlights the importance of child community visitors and child advocates being aware of the opportunity for early identification of disability, and advocating for children and young people to have those support needs addressed as early as possible.

Aboriginal and Torres Strait Islander Child Protection Service Reform Project

The Child Protection Inquiry highlighted that Aboriginal and Torres Strait Islander children were over represented in the child protection system in Queensland. In an attempt to address the over representation of Aboriginal and Torres Strait Islander children, the Child Protection Inquiry recommended the establishment of an Aboriginal and Torres Strait Islander Reform Project,³⁴ with the primary purpose of reviewing current service delivery to remote communities.

Figure 4 Children in care by zone and indigenous status, 30 June 2015



As can be seen from Figure 4 above, child community visitors work with a large number of Aboriginal and Torres Strait Islander children, most notably in the Northern and Far Northern zones. The Public Guardian is acutely aware that different regions across the state encounter different issues identified by child community visitors. Key concerns remain regarding the lack of culturally accessible and available services for this cohort, and their ongoing over-representation in the child protection and youth justice systems.

³⁴ Child Protection Inquiry, Recommendation 11.1.

In directing its resources towards the most vulnerable children, the OPG has recognised that over-representation of Aboriginal and Torres Strait Islander children must be a key focus. A challenge for the OPG is ensuring that there is an appropriate level of service delivery to those children and young people residing in remote communities. As part of a strategy to address this issue, OPG is establishing a pilot program to commence in 2015-16 to recruit locally based and culturally appropriate child community visitors in four discrete communities. Child community visitors appointed under the pilot project will be responsible for visiting all children and visitable sites in that area.

Adult community visitors

The *Public Guardian Act 2014* provides that one of the functions of the Public Guardian is to provide a community visitor program for adults with impaired capacity to protect the rights and interests of the adult if they reside at a visitable site.³⁵ Visitable sites for adults with impaired capacity include the following places:³⁶

- Mental health services authorised under the *Mental Health Act 2000*.
- The forensic disability service authorised under the *Forensic Disability Act 2011*.
- Places, other than a private dwelling house, that are prescribed under a regulation,³⁷ including for example, a disability service funded by the Department of Communities, Child Safety and Disability Services.

Adult community visitors independently monitor these three different types of accommodation, making inquiries and lodging complaints for, or on behalf of, residents of these visitable sites. Adult community visitors have the power to refer complaints where necessary to an external agency, such as the Department of Communities, Child Safety and Disability Services, Queensland Health, or the Residential Services Unit, the Director of Mental Health, the Director of Forensic Disability, or QCAT,³⁸ where appropriate.

This visiting function plays a critical role in ensuring that the rights of extremely vulnerable adults in various forms of supported accommodation throughout Queensland are properly respected. In many instances, adult community visitors develop rapport with both the clients and support agencies and staff, and through these relationships are able to effect positive changes to benefit clients, without the necessity of having to resort to formal complaint mechanisms.

Statewide adult community visitors program

Figure 5 below shows that as at the end of 2014-15, Brisbane North had the highest average number of clients per facility (8.9 clients per facility), followed by Brisbane South (6.6) and Ipswich (6.6). Logan, Far Northern and Central South zones had the lowest average number of clients visited per facility (2.6, 2.8 and 2.9 respectively).

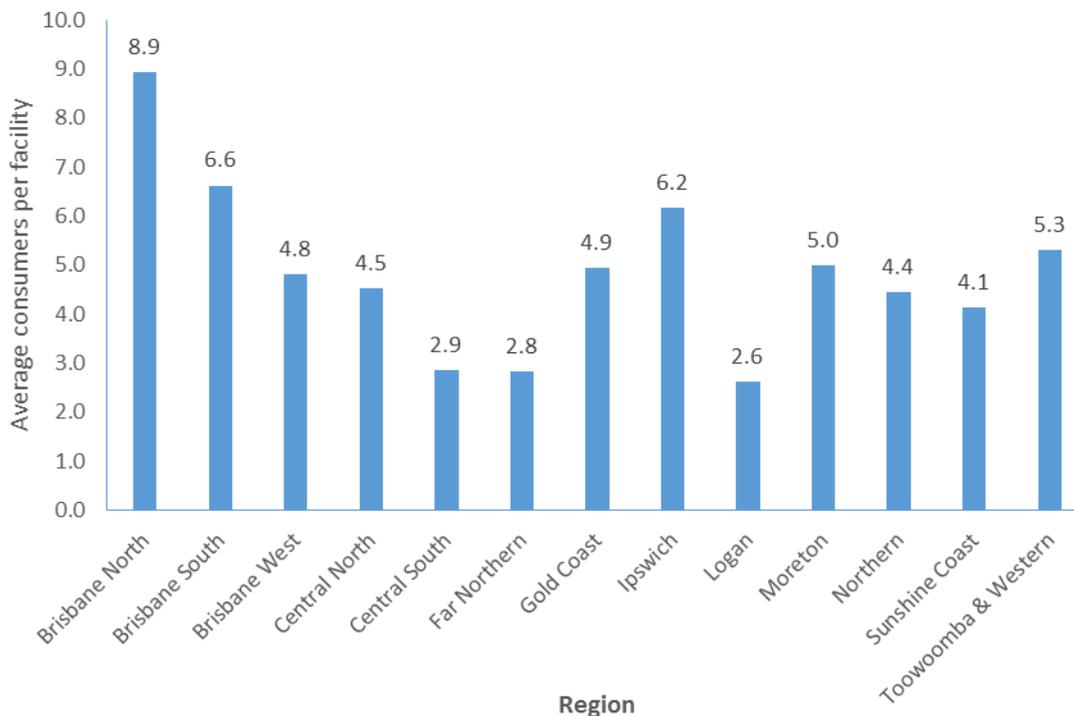
³⁵ *Public Guardian Act 2014*, s.12(1)(b).

³⁶ *Public Guardian Act 2014*, s.39.

³⁷ See Schedule 1 of the *Public Guardian Regulation 2014* for visitable sites.

³⁸ *Public Guardian Act 2014* s.47.

Figure 5: Average number of clients per facility by zone, 30 June 2015



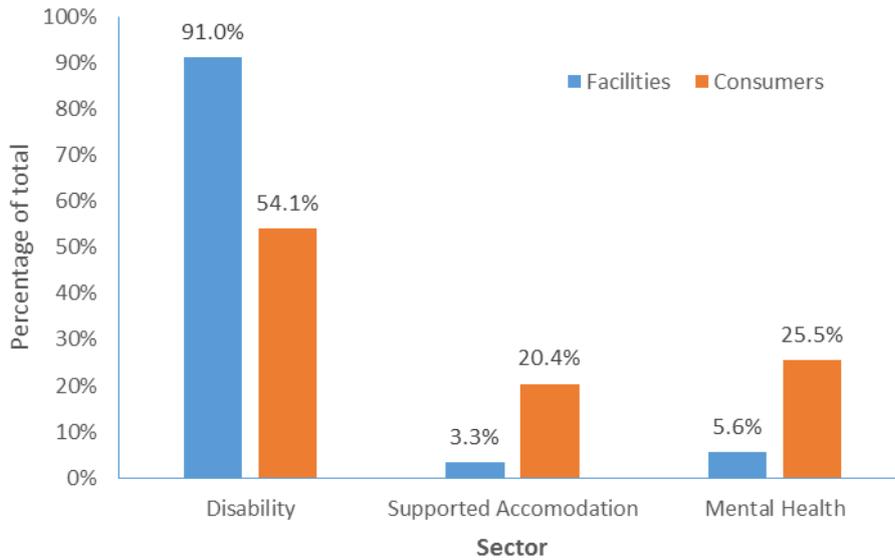
During 2014-15, adult community visitors helped protect the rights and interests of approximately 6,741 vulnerable adults living in residential facilities across Queensland. During this year, adult community visitors identified 2,534 issues on behalf of clients. In 2014-15 this was achieved by conducting 5,657 visits to 1,261 visitable sites. This represents an increase in approximately 957 more visits to visitable sites than the 4,700 visits conducted by adult community visitors in the year 2013-14.

Figure 6 on the following page shows the breakdown of visitable sites and the percentage of clients visited by the type of facility. It shows that 91.0% of facilities visited are in the disability sector, and 54.1% of clients visited reside in disability residential care. While disability residential care sites account for in excess of 90% of sites visited, they house just over half of all people who are visited by an adult community visitor. This is due to the large number of disability services that house only a few individuals at a time.

While only 5.6% of sites visited are authorised mental health services (both public and private), a quarter of clients (25.5%) visited in 2014-15 resided in these facilities. The number of privately operated supported accommodation sites regulated under the *Residential Services (Accreditation) Act 2002* visited was very low (3.3% of all visitable sites), however, they accounted for a significant number (20.4%) of all clients visited during the financial year.

These statistics highlight the key role that adult community visitors play in ensuring the rights and interests of adults with impaired capacity are respected, across all these sectors.

Figure 6: Proportion of facilities and consumers by sector, 30 June 2015

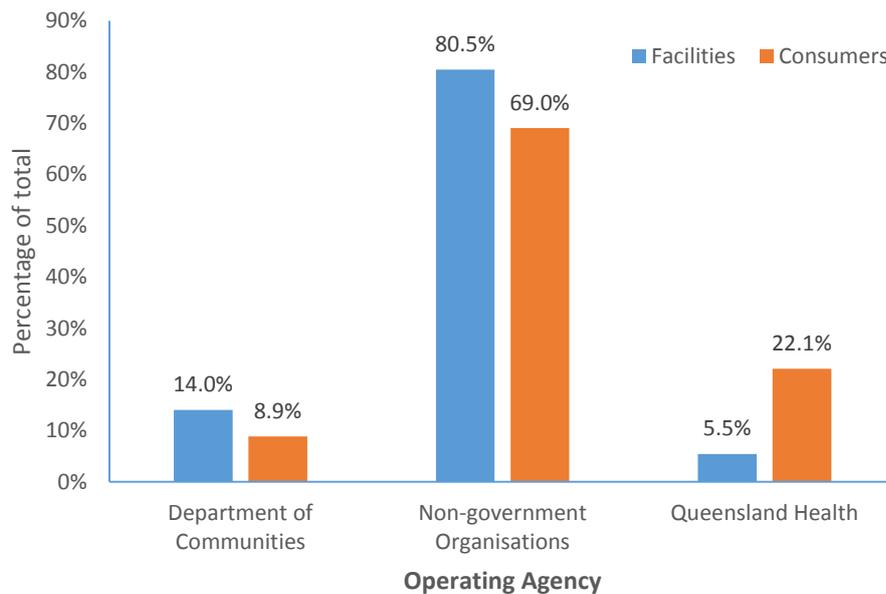


Visitable sites

In 2014-15, adult community visitors visited clients at 1,261 visitable sites. Figure 7 below shows that the majority of these facilities (80.5%) were operated by non-government organisations (NGOs). NGO facilities housed the majority of clients (69.0%) visited by adult community visitors.

Facilities operated by the Department of Communities, Child Safety and Disability Services comprised 14.0% of the facilities visited, and housed 8.9% of clients visited. Queensland Health facilities accounted for 5.5% of facilities visited, with 22.1% of clients visited in residence.

Figure 7: Proportion of facilities and consumers by operating agency, 30 June 2015



Type of visits

The type of visits that are conducted by adult community visitors can vary depending on a variety of internal and external factors. Adult community visitors can conduct one of three types of visits to a visitable site: unannounced, announced, and requested.

Figure 8 below, shows that of the 5,657 visits made to visitable sites in 2014-15, 3,857 (68.2%) were unannounced, 659 (11.6%) were announced, 505 (8.9%) were requested, and 636 (11.2%) were incomplete. Reasons why a visit may be recorded as 'incomplete' include that the client was not at home when the adult community visitor attended the site, or the adult community visitor was unable to complete the visit due to safety concerns.

Figure 8: Percentage of visits by visit type, 2014-15³⁹

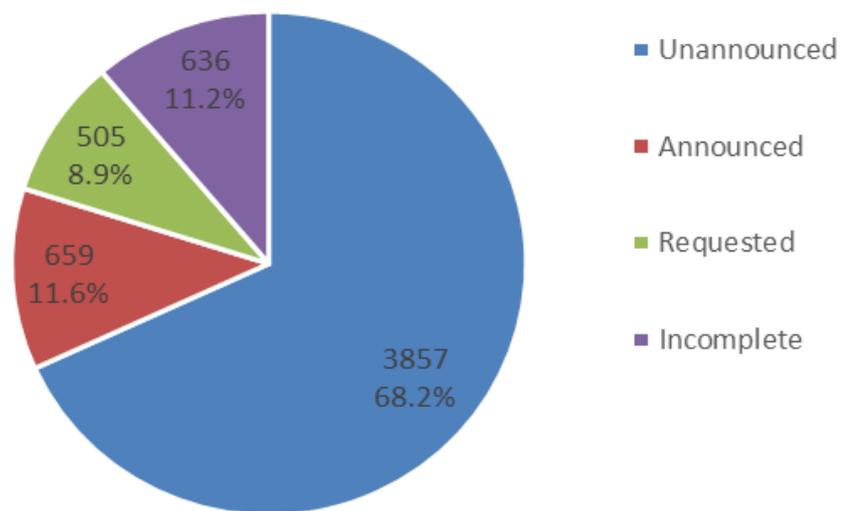


Figure 9 below shows that of the 505 requested visits, the majority of visits were requested by the Queensland Civil and Administrative Tribunal (QCAT) (290 visits), followed by the client (77 visits) and family members (29 visits). Adult community visitors generated 27 requests for visits, and in combination with OPG Guardians (11 visits), the OPG instigated a total of 38 visit requests. Other requests for visits were made by individuals who chose to remain anonymous (17), service providers (26), support workers (11) and others (17). The category of 'others' includes community members, allied health professionals, government agency representatives outside of the OPG, private guardians, statutory health attorneys, and advocates.

Number of entries of visitable sites outside normal hours for adults and children

Section 126(2) of the *Public Guardian Act 2014* requires that the Public Guardian report on the operations of community visitors during the year, including the number of entries of visitable sites outside normal hours authorised by the Public Guardian. Of the 9,394 visits made by community visitors to visitable sites,⁴⁰ approximately 215⁴¹ were made to visitable sites after normal hours.⁴²

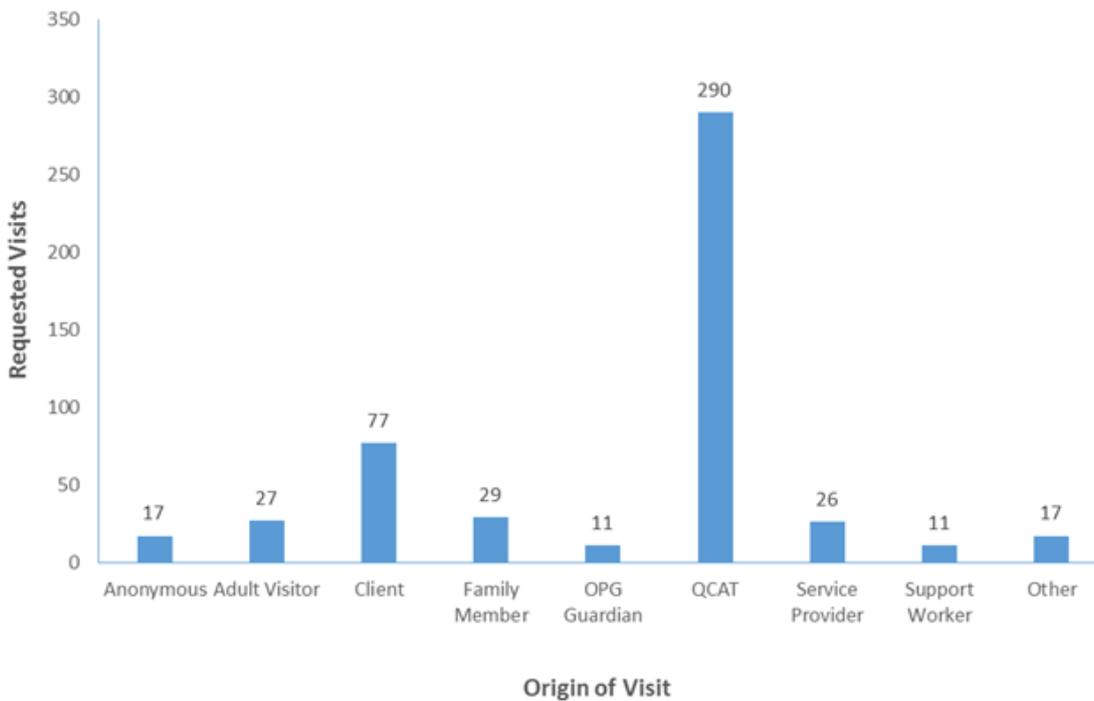
³⁹ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

⁴⁰ This includes visits to young people in adult correctional facilities

⁴¹ Reporting procedures were under development during 2014-15 and therefore not all visits made may have been recorded.

⁴² *Public Guardian Act 2014*, Schedule 1 defines normal hours as being between 8 a.m. and 6 p.m.

Figure 9: Breakdown of visits by visit type, 2014-15



Case Study: John

John⁴³ is a 26 year old man with impaired capacity who is living in shared supported accommodation. The site where he lives is regularly visited by an adult community visitor (Jenny), and John has built a strong relationship of trust with her over the last few years. John however, started to demonstrate certain behaviours that were worrying to Jenny. He started to show symptoms of physical anxiety that he had never experienced before. He had also started to refuse to leave his room and was showing signs of suffering from depression.

Jenny started to ask the people who ran the accommodation about whether there had been any changes at the site. Jenny found out that a new tenant had recently arrived to live at the accommodation. When Jenny made further inquiries and talked further with John, she found out that John was being bullied by the new tenant. Jenny worked with the service provider to see what solutions could be worked out with the service provider, the new tenant and John, to help John be protected from bullying by the other tenant and assist him in overcoming the bullying he had experienced.

The service provider successfully addressed the issue of bullying that John was being subjected to, and worked with the newly arrived tenant to ensure that his behavior was addressed. The changes that the service provider made helped John to feel safe and secure in his home again. His depression eased, and he no longer felt anxious or afraid living in the accommodation service.

As a result of the work of the adult community visitor, John now reports that he is enjoying life. He is now getting along well with all the other tenants, including the one who had initially bullied him. He is actively engaged in local community activities, and has overcome his depression and no longer requires treatment from a psychiatrist.

⁴³ The name of the adult has been changed.

Child advocates

The *Public Guardian Act 2014* provides that the Public Guardian has child advocate functions.⁴⁴ This role reflects the recommendation made by the Child Protection Inquiry that provision should be made for individual advocacy for children and young people in the child protection system.⁴⁵

OPG child advocates protect the rights of children and young people in the child protection system and ensure that their voices are heard, particularly when decisions are made that affect them and their care arrangements. Child advocates are based in Brisbane, Ipswich, Townsville and Cairns, and operate statewide in collaboration with the child visiting program across Queensland.

Child advocates support children and young people in the child protection system by:

- ensuring that their views are heard and taken into consideration when decisions are made that affect their care arrangements (for example, decisions made in family group meetings, court or QCAT hearings)
- providing support in court conferences and organizing legal representation for the child or young person
- applying on behalf of the child or young person to QCAT or court regarding changes to a placement, contact decisions, or changes to a child protection order.

Child advocacy functions are performed either by the child community visitor and their manager, or by child advocates (all who are qualified lawyers) employed by the OPG. The nature of the issue will decide which of those roles will perform that advocacy function. For example, lawyer advocates who are legally trained are those best placed to support a child or young person to apply for an application for review before QCAT and also to support a child or young person appearing in the Childrens Court of Queensland.

Practical examples of child advocacy officers performing child advocate functions include; helping a child to make an official complaint; helping a child to seek or respond to the revocation or variation of an order made under the *Child Protection Act 1999*; helping a child to initiate, or on a child's behalf initiating, an application to QCAT; and supporting a child at proceedings before a court or QCAT. That includes the ability to make submissions, call witnesses and test evidence.

During 2014-15 there have been significant commendations received from the Childrens Court, the Magistrates Court and QCAT for the actions and assistance of child advocates both individually and collectively. Significant satisfaction has also been expressed by children that, through the child advocates, their views and wishes are being effectively communicated to decision-makers.

In 2014-15 child advocates closed 351 issues.⁴⁶ The issue type breakdown is shown in Table 3. It shows that more than half of issues closed by child advocates (196 issues or 56% of issues closed) related to general advocacy, followed by locally resolvable issues (72 issues or 21%) and QCAT matters (44 issues or 13%). 36 matters (10% of closed matters) related to legal advocacy in courts. 3 issues (1% of issues closed) related to allegations of 'harm'.

⁴⁴ *Public Guardian Act 2014*, s.13.

⁴⁵ *Child Protection Inquiry*, Recommendation 12.7.

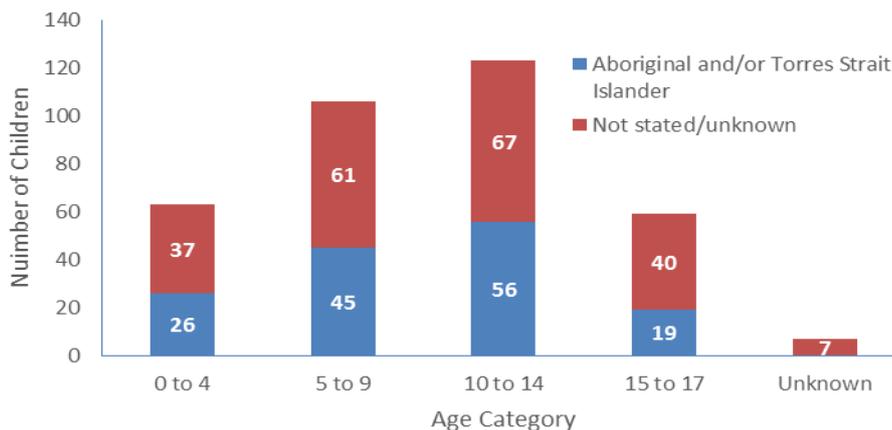
⁴⁶ A child advocate will close an issue when the matter is appropriately resolved.

Table 3: Breakdown of child advocate closed issues, 2014-15⁴⁷

| Issue Type | Issues Closed | Percentage |
|----------------------------|---------------|-------------|
| General advocacy | 196 | 56% |
| QCAT matter | 44 | 13% |
| Other legal advocacy | 36 | 10% |
| Locally resolvable | 72 | 21% |
| Harm related | 3 | 1% |
| Total issues closed | 351 | 100% |

The 351 issues closed by child advocates resulted in assistance to 358 children or young people. Figure 10 below shows that in 2014-15, more than 40% of the 358 children assisted by child advocates identified as Aboriginal or Torres Strait Islander. Overall, the most common age group assisted was the 10 to 14 year age group, with 123 young people (or 34% of young people) assisted. The numbers of children and young people assisted include: 0-4 years (63 children); 5-9 years (106 children); and 15 to 17 years (59 young people). The ages of 7 children were unable to be identified.

Figure 10: Children assisted by child advocates in 2014-15 by age and Indigenous status



During 2014-15⁴⁸, child advocates also visited children and young people, and attended court and other child and youth related meetings to advocate on their behalf, including:

- 309 visits to children
- 103 court appearances
- 68 family group meetings
- 21 court ordered conferences
- 16 QCAT hearings
- 19 other court or QCAT matters.⁴⁹

⁴⁷ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

⁴⁸ These figures are based on data from September 2014 (only 8 months) as recording only commenced after this time.

⁴⁹ Consisting of QCAT conferences, mentions, unspecified court attendances, and court hearings.

Case Study: Advocacy

Lupita⁵⁰ is 12 years old and residing in an approved placement. She had made her views and wishes known to her community visitor with respect to wanting to remain in the care of Child Safety Services (CSS) and not be reunified with her mother or father. The community visitor initially resolved this issue with her CSO.

Several weeks later, Lupita's mother and father sought to contest the order in court. CSS requested that the OPG support Lupita to express her views and wishes in a family group meeting and at court. An OPG child advocate and community visitor both went to visit Lupita and then attended the family group meeting on Lupita's behalf to express her views and wishes. The child advocate later attended the court mention for the order and expressed Lupita's view and wishes on her behalf. Lupita's mother was unable to attend court and Lupita's father appeared in the court by telephone. After hearing Lupita's wishes expressed by the child advocate, the father indicated his consent to the order for Lupita to remain in the care of CSS, resulting in a custody order to CSS for a period of 2 years.

The child advocate telephoned Lupita to let her know the outcome. Lupita told them that she was really happy with the result and thanked the OPG for helping her. The child safety officer, also advised that the carer had been initially quite nervous about another person coming to speak to Lupita, but had been really happy with the way that the child advocate and community visitor had dealt with her and handled her issues. Lupita is continuing to be visited by the community visitor.

⁵⁰ The name of the child has been changed.

Adult legal services team

Adults with impaired capacity are vulnerable to being charged with criminal offences and are at risk of obtaining poor legal outcomes when they become involved with justice systems. The Official Solicitor within the OPG provides legal services to ensure that the legal rights of clients for whom the OPG is appointed guardian, are protected.

Adults with impaired capacity may be easily persuaded by others who want to exploit them. They may have a very poor understanding of the justice system and what is required of them should they come into contact with it. They may have little or no understanding of their legal rights, and often lack the ability to locate and engage with services that could support them.

Legal officers do not provide direct legal representation to clients. Legal officers act as guardians for legal matters⁵¹, and work in collaboration with OPG guardians for health, accommodation and other personal matters⁵² to ensure that the OPG is aware of any legal matter in which a new or existing client might be involved.

Legal officers often have to rely on information from third parties including QCAT, individual support workers, service providers or other agencies that are involved in the client's life. The legal team also has access to the court information which allows legal officers to determine whether a person for whom the OPG has been appointed as guardian for a matter is involved in upcoming proceedings.

Once it becomes apparent that the client does have an existing or outstanding legal matter, then a legal officer will ensure that the client has appropriate legal representation. In some situations the client will be entitled to a grant of legal aid or be eligible for legal assistance from other community organisations.

A critical task for each legal officer is to ensure that the legal representative engaged to conduct the client's matter has an understanding of the OPG's role in legal proceedings. The legal officer is responsible for briefing the legal representative about the client's story and circumstances, including information that the client sometimes cannot provide. The legal officer's role is an acknowledgement of the complexity of providing legal services to clients with impaired capacity. A busy solicitor without expertise may unintentionally overlook the extra needs, or even the range of options that might be available to a vulnerable client.

Protecting the legal rights of adult clients

During 2014-15, OPG was involved with 1,831 court events for 292 OPG guardianship clients. Table 4 sets out the number of different types of legal matters. 78% of legal matters concerning OPG guardianship clients were criminal matters (55% were indictable offences; 23% summary offences). Child protection matters made up 11% of legal matters. Of the remainder of matters, domestic violence accounted for 7% of matters; mental health accounted for 3% of matters, family law accounted for 1% of matters, and 1% related to other legal issues.

⁵¹ *Guardianship and Administration Act 2000* s.18 provides a definition for 'legal matter'

⁵² *Guardianship and Administration Act 2000*, Schedule 2, Part 2 provides a definition for 'personal matter' which is a matter, other than a special personal matter, or special health matter (as defined under the GAA), relating to the adult's care, including the adult's health care, or welfare.

Table 4: Types of legal matter, 2014-15⁵³

| Type of matter | Percentage |
|-------------------|------------|
| Criminal | 78% |
| – Indictable | 55% |
| – Summary | 23% |
| Child Protection | 11% |
| Domestic Violence | 7% |
| Mental Health | 3% |
| Family Law | 1% |
| Civil | 1% |

Table 5 below shows that 92% of the court attendances that occurred were regarding court mentions, and a further 3% were regarding court hearings. The remainder of court attendances were related to family group meetings (1%), court ordered conferences (1%), trials (1%), sentencing (1%), and committal mentions (1%).

Table 5: Types of hearings, 2014-15

| Type of hearing | Percentage |
|--------------------------|------------|
| Mention | 92% |
| Hearing | 3% |
| Family Group Meeting | 1% |
| Court Ordered Conference | 1% |
| Trial | 1% |
| Sentence | 1% |
| Committal Mention | 1% |
| Other * | <1% |

* includes Committal Hearings and Appeals

Table 6 shows that the legal representation of adult clients for 2014-15 has been provided by a variety of sources. Legal Aid is a significant provider of legal representation (66%), either via a Legal Aid preferred supplier (39%) or internally by a Legal Aid legal representative (27%). In 12% of legal matters the client was represented by the Aboriginal & Torres Strait Islander Legal Service. As in 2013-14, 18% of adult clients did

⁵³ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

not have access to formal legal representation. Private solicitor/barrister (2%) and Community Legal Services (1%) together provided 3% of legal representation for OPG clients.

Table 6: Legal representation, 2014-15⁵⁴

| Legal representation | Percentage |
|---|------------|
| Legal Aid Qld (Preferred Supplier) | 39% |
| Legal Aid Qld (In-house) | 27% |
| None | 18% |
| Aboriginal & Torres Strait Islander Legal Service | 12% |
| Private solicitor/barrister | 2% |
| Community Legal Service | 1% |

Scenario 1: Janine

Janine⁵⁵ is 27 years old and suffers from a severe intellectual disability with a history of severe trauma and alcohol abuse. Janine has approximately 40 criminal charges mostly consisting of committing a public nuisance, contravening directions and breach of bail conditions. As a result of continued breaches of bail, Janine has been incarcerated for periods of time. The Public Guardian took steps to obtain a lawyer on her behalf and instructed her lawyer to obtain a psychiatric report. As the report indicates that Janine may be permanently unfit for trial due to her significant intellectual disability, the Public Guardian has successfully been able to facilitate her matter being referred to the Mental Health Court rather than having it automatically proceed through the criminal justice system, which otherwise may have led to an unjust outcome for Janine.

While Janine receives on-going support in the community to assist her with attending appointments, going shopping, and accessing the community, her persistent alcohol abuse severely impacts on her ability to gain employment and maintain her tenancies. Janine has been residing in community housing and has had some minor disagreements with neighbouring tenants. As a result, the organisation responsible for the housing issued Janine with a notice of eviction, which would have resulted in Janine being evicted into homelessness.

The Public Guardian sought legal representation for Janine through Queensland Public Interest Law Clearing House to appoint a firm and barrister to represent Janine at QCAT. Pursuant to the Public Guardian's instructions, her barrister was able to make submissions on Janine's behalf as to the nature of her impairment, the ongoing support she receives in the community and the fact that she hadn't caused any further issues in the complex for over 4 months. As a result of these submissions made on Janine's behalf, QCAT dismissed the application and Janine has continued to happily reside at the property where there have been no further issues.

⁵⁴ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

⁵⁵ This scenario demonstrates the type of issues that a guardianship client may face when interacting with the criminal justice system.

Scenario 2: Robert

Robert⁵⁶ is a 55 year old Torres Strait islander man with a diagnosis of an intellectual disability, major depressive disorder and borderline personality disorder who has a history of self-harming behaviour. Robert resides in supported accommodation where he is unhappy as he would like to be living with people from his own cultural background. As a result of feeling frustrated that his concerns were not being heard over a period of time, Robert lost his temper, started yelling abuse at the staff and caused damage to certain property. Consequently, Robert was charged with nuisance and damage related offences.

The Public Guardian obtained representation on Robert's behalf. During discussions between Robert, his lawyer and the Public Guardian, it was evident that Robert did not understand the nature of the offences nor the consequences of his actions. The Public Guardian was able to request relevant medical material on Robert's behalf which identified Robert's diagnosis and related behavioural consequences. The Public Guardian was then able to provide his legal representative with relevant information and instructions to seek that the charges be dropped on the basis that continuing the charges against Robert would serve no public interest and would not have any deterrent effect. Following the charges being dropped, Robert has had no further legal issues.

Scenario 3: Jack

The Public Guardian was appointed for Jack⁵⁶, a 40 year old man with a mild intellectual impairment who had recently separated from his wife and required assistance with complex decision-making. Jack and his wife have two young children. After their separation, Jack's wife limited his access to their children. In accordance with Jack's wishes, the Public Guardian successfully obtained legal representation for him and provided instructions for the matter to proceed to a family dispute resolution conference. Jack's legal representative was able to successfully negotiate the making of a parenting plan facilitating regular time between Jack and his children.

Power to apply for entry and removal warrant

Under section 36 of the *Public Guardian Act 2014*, the Public Guardian has power to apply to QCAT for a warrant to enter a place and remove an adult, if there are reasonable grounds for suspecting that there is an immediate risk of harm, because of neglect (including self-neglect), exploitation or abuse. The Public Guardian did not exercise this power during 2014-15.

⁵⁶ This scenario demonstrates the type of issues that a guardianship client may face when interacting with the criminal justice system.

Guardianship

Background

Under guardianship legislation, adults with impaired capacity may become clients of the Public Guardian by means of an appointment by QCAT⁵⁷. Alternatively, a person may appoint the Public Guardian as their attorney for personal/health matters under an enduring document.⁵⁸ From 1 July 2014, the protective roles and functions of the Adult Guardian in relation to adults with impaired decision-making capacity – including the role of substitute decision-maker – were transferred to the Public Guardian, with the passage of the *Public Guardian Act 2014*.

The Public Guardian may also act as attorney for a person following the suspension of an attorney's powers⁵⁹, or the Supreme Court may appoint the Public Guardian for a person with impaired capacity.

In addition to its substitute decision-making roles, the Public Guardian may also represent a person's rights and interests when appointed as allied person under the *Mental Health Act 2000*,⁶⁰ or when appointed as a separate representative to help represent a person's views, wishes and interests in a matter before QCAT.

Role of the Public Guardian

In Queensland, as in other jurisdictions, the role of a guardian is to act as a substitute decision-maker for a person who is unable to make their own decisions due to a cognitive impairment. The appointment of a guardian by QCAT must only be made where there is a need for a decision and where, without an appointment, the person's needs will not be adequately met or their interests protected.⁶¹ Decisions should be made in accordance with the General Principles set out in the *Guardianship and Administration Act 2000*⁶² (Appendix 4).

The legislation also prescribes the Public Guardian as guardian of last resort,⁶³ that is, to be appointed only if there is no other appropriate person available for appointment.⁶⁴ The legislation upholds the role and importance of family members and others acting in an informal capacity for a person.

Given this context, the Public Guardian is given formal powers to exercise decision-making on behalf of a relatively small number of Queenslanders with impaired capacity. In 2014-15, the Public Guardian provided guardianship services to a total of 2,900 people. This represents 2.5% of the total estimated number of adults with impaired capacity in Queensland (115,745 people).⁶⁵

Queensland Civil and Administrative Tribunal appointments

Over 2014-15, demand for guardianship services has continued to rise. As experienced in previous years, demand on the services of the OPG continues to increase as a result of new (and renewed) appointments by QCAT. In 2014-15 there was a total of 743 new QCAT appointments in favour of the Public Guardian. This represents an increase of 11% from the 2013-14 reporting period. By comparison, in 2013-14 the increase in new appointments from 2012-13 was a little over 1%. In addition, there were 32 new enduring power of attorney (EPA), allied person, suspension, or separate representative appointments of the Public Guardian in

⁵⁷ *Guardianship and Administration Act 2000*, s.14.

⁵⁸ *Powers of Attorney Act 1998*, s.29.

⁵⁹ *Public Guardian Act 2014*, s.35.

⁶⁰ *Mental Health Act 2000*, Chapter 9, Part 1.

⁶¹ *Guardianship and Administration Act 2000*, s.12.

⁶² *Guardianship and Administration Act 2000*, Schedule 1, Part 1.

⁶³ *Guardianship and Administration Act 2000*, s.66; *Powers of Attorney Act 1998*, s.63

⁶⁴ *Guardianship and Administration Act 2000*, s.14.

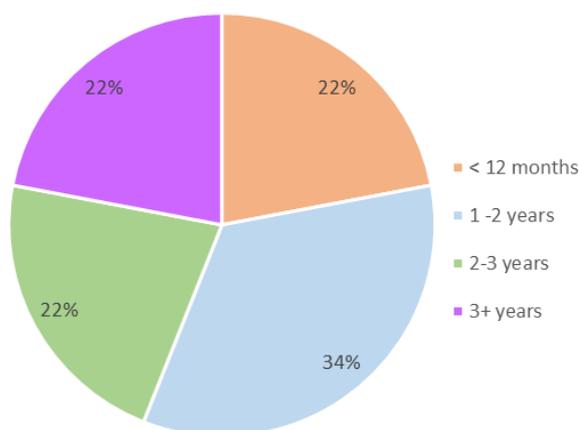
⁶⁵ *The potential population for systems advocacy*, Office of the Public Advocate (Queensland), April 2015.

2014-15. A large number of these new appointments have been triggered by the introduction of the Commonwealth Government’s reforms to residential aged care. As at 30 June 2015, the Public Guardian held just over 2,300 guardianship appointments. However, the total number of adults who were provided with guardianship services throughout the year reached just over 2,900. Hence there is a significant amount of “turnover”, with 775 new clients and 617 closed client matters throughout the year. The Public Guardian actively seeks the revocation of guardianship appointments when a person no longer needs to be subject to a QCAT order. Of the 617 closed client matters in 2014-15, 47% were the result of a revocation by QCAT of the Public Guardian’s order.

Trends in Queensland Civil and Administrative Tribunal appointments

Figure 11 below, sets out the duration of QCAT appointments for 2014-15. 22% of appointments were for less than 12 months, with 34% of appointments ended within 1-2 years. 22% of appointments had a duration of 2-3 years, with 22% of appointments being for 3 years or longer.

Figure 11: Duration of QCAT appointments (new and reappointments), 2014-15



During 2014-15 there was a noted increase in the proportion of appointments being received as interim orders. A large number of these interim orders were made for the purpose of residential aged care placements. Given that administrators can experience lengthy delays in obtaining the financial information necessary to make such decisions, in 2014-15 this triggered an additional set of interim orders.

Consistent with previous years, appointments for accommodation, service provision and health care continue to be the most common areas of appointment for the Public Guardian. Of all guardianship appointments held by the Public Guardian as at 30 June 2015:

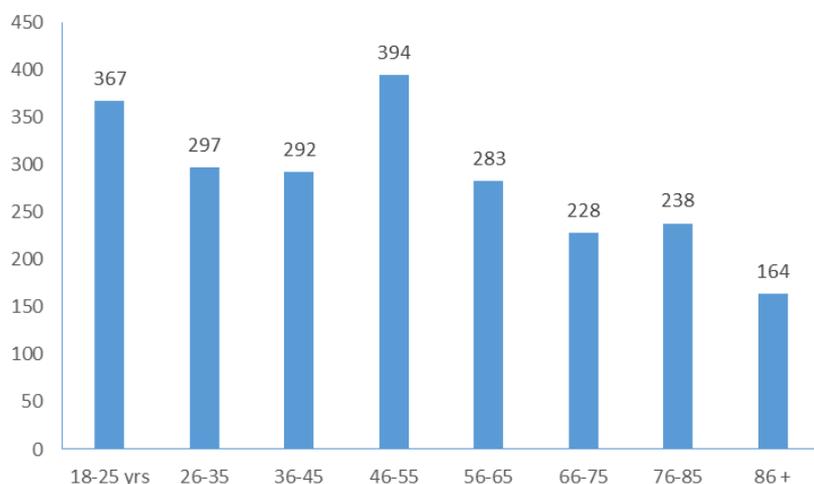
- 71% included Accommodation matters
- 65% included Service provision
- 61% included Health care
- 19% included Legal matters
- 17% included Contact/Visits
- 13% included Restrictive Practices
- 8% were plenary appointments (i.e. for all personal matters).

Profile of guardianship clients

Notwithstanding the sharp increase in demand in 2014-15, the profile of OPG guardianship clients remained broadly consistent with that of previous years. Approximately 58% of all clients are male; 42% are female. It is estimated that just under 300 OPG guardianship clients (or 13%) identify as Aboriginal or Torres Strait Islander, with almost 70% residing in North or Far North Queensland. This represents a significant overrepresentation of Aboriginal or Torres Strait Islanders among the OPG’s client base. Even taking into account the higher rate of disability among Aboriginal or Torres Strait Islanders (estimated to be at least 1.7 times the non-Indigenous rate⁶⁶), this cohort are overrepresented among the OPG’s client base by at least a factor of two.

Figure 12 shows the age groups of all OPG guardianship clients as at 30 June 2015. The average age of OPG guardianship clients as at the end of 2014-15 was 51 years, up from 50 at 30 June 2014. The average age for new appointments made in 2014-15 was 59 years.

Figure 12: Age groups of all guardianship clients, 30 June 2015



Overall, 1,605 guardianship clients as at the end of the year were *potentially* NDIS-eligible, being under 65 years of age. This accounts for 72% of the Public Guardian’s total client base. This data is illustrative of the ageing of the Queensland population and the impact of dementia on the community. It remains to be seen as to whether this trend will continue or whether, with the launch of the NDIS in Queensland, the balance may shift back towards younger people (i.e. people under 65 years who will require a guardianship appointment in order to participate in the NDIS).

Intellectual disability continues to be the most prevalent cause of OPG clients’ impaired decision-making capacity, accounting for 38% of all clients, down from 40% in the previous year. Psychiatric disability and dementia account for 22% and 21% respectively. People with a primary diagnosis of acquired brain injury (ABI) make up 13% of the Public Guardian’s client base, and those with neurological and other medical conditions the remaining 6%. Around one-fifth of all clients have multiple forms of cognitive impairment, with a psychiatric disability the most prevalent secondary condition suffered by people with intellectual disability and an acquired brain injury. Table 7 below sets out the disability groups with respect to primary and secondary impairments for all OPG guardianship clients during 2014-15.

⁶⁶ *Aboriginal and Torres Strait Islander People with a Disability 2012*, Australian Bureau of Statistics publication 4433.0.55.005, December 2014.

Table 7: Disability of guardianship clients by primary and secondary impairments, 2014-15

| Primary impairment | Percentage | Number of clients | % with secondary impairment |
|--------------------|------------|-------------------|-----------------------------|
| Intellectual | 38% | 1,117 | 20% |
| Psychiatric | 22% | 635 | 19% |
| Dementia | 21% | 628 | 10% |
| ABI | 13% | 381 | 30% |
| Other | 4% | 129 | 8% |
| Illness | 2% | 55 | 18% |

Challenges and emerging themes in guardianship

1. *Lack of service and accommodation options.*

In discharging the Public Guardian’s decision-making role, it is frequently the case that for many clients, there are few (if any) suitable options available for their accommodation and service provision. In many cases, considerable effort is expended on advocacy, negotiation and escalation with government funding bodies and non-government service providers, in order to achieve suitable outcomes which protect a person’s rights and interests.

2. *Social exclusion and marginalisation of clients.*

There are a number of clients who have significant, multiple and complex needs, and for whom no service system response is adequate. In some cases, the appointment of a guardian is seen by the service system as the last resort, in a hope that the clients may be able to receive some level of service and protection. However, in most of these cases the involvement of the guardianship system is unable to improve their lives or ensure client protection and positive outcomes.

The primary issue for this group of people is severe and persistent social exclusion from mainstream services and opportunities. This group includes people who have a combination of:

- dual diagnosis (e.g. combination of intellectual/learning disability, mental health illness and/or brain injury)
- serious medical issues (e.g. diabetes, epilepsy, kidney failure etc.)
- homelessness or transiency
- drug/alcohol problems
- exclusion from public housing
- behavioural issues (but who do not fall within the restrictive practices regime)
- a history with child protection
- frequent interaction with the criminal justice system
- no (or highly fragmented/dysfunctional) social networks.

What these clients most require is intensive case management and service coordination activities, given their regular interaction with a myriad of different systems, and their routine exclusion from appropriate, mainstream services.

3. *Unmet disability support needs.*

There are a significant number of clients under 65 years who have been assessed as eligible to receive specialist funded disability services, but who are not receiving services. In some cases, they have not been prioritized as “high needs” by the Department of Communities, Child Safety and Disability Services. In other cases, their needs are such that the disability services in their region are unable to fully support them. The outcomes for this group of clients can be poor. In a number of cases, people under 65 years have been forced into nursing homes because there is no funding available to support their high needs or no suitable service provider in the person’s region. Alternatively, for clients who may be relatively high-functioning and require only a moderate amount of support, this is frequently difficult to secure, with the guardian’s advocacy efforts often unsuccessful.

Health care

Generally health providers must obtain consent to carry out health care for adults with impaired capacity. This consent can be provided:

- ⦿ under an Advanced Health Directive
- ⦿ from a QCAT appointed Guardian
- ⦿ from a personal attorney appointed under an enduring power of attorney (EPA), or advance health directive⁶⁷
- ⦿ from a Statutory Health Attorney.⁶⁸

A person acts in the role of statutory health attorney because of their relationship with the impaired adult. Under s.63 of the *Powers of Attorney Act 1998*, the statutory health attorney is the first available and culturally appropriate adult from a:

- ⦿ spouse or de facto partner (as long as the relationship is close and continuing)
- ⦿ person who is responsible for the adult's primary care (but is not a paid carer, although they can receive a carer's pension)
- ⦿ close friend or relative (over the age of 18).

If there is no one suitable or available, the Public Guardian can act as the statutory health attorney of last resort for all Queenslanders. The Public Guardian is also able to make health care decisions as a QCAT appointed guardian, or an EPA.

All health care decisions must be made so as to result in the least restriction of the adult's rights, and with regard to the Health Care Principle set out in the *Guardianship and Administration Act 2000* (GAA).

OPG also maintains a 24 hour, 7 days a week health care consent telephone service, which is available to all health care providers in Queensland. Health care providers are able to contact this service, speak to a staff member of the OPG and obtain specific recommendations based on the particular situation.

Making health care decisions

During 2014-15, the OPG made 1,303 health care decisions for adults with impaired decision-making capacity. This is a 3.5% decrease from 1,350 health care decisions made in 2013-14. Approximately 20% of these health care decisions were made after hours, a slight increase on 17% made in the previous reporting year.

Table 8 sets out the types of health care consents made by the OPG in 2014-15. Most health care decisions (76%) were for medical (539 decisions) and surgical procedures (454 decisions), which is relatively consistent with decisions made in the reporting year of 2013-14 in which 618 medical decisions and 402 surgical procedures decisions were made. 117 decisions were made in relation to end-of life matters for decisions to withhold and/or withdraw life sustaining measures. This figure is 33% higher than in the previous reporting year in which 88 decisions to withhold and/or withdraw life sustaining measures were made.

Of the remaining decisions, 187 decisions concerned dental care, and one involved allied health. The OPG also provided consent in five cases for a forensic examination to be conducted of an adult with impaired capacity

⁶⁷ *Powers of Attorney Act 1998*, Chapter 3.

⁶⁸ *Powers of Attorney Act 1998*, Chapter 4.

under s.38 of the *Public Guardian Act 2014*. These cases related to alleged sexual and/or physical assault of adults who did not have capacity to consent to the examination themselves.

Table 8: Health care consents, 2014-15

| Health care consent | | | | |
|--|----------|-------------|-------|------------|
| | In hours | After hours | Total | Percentage |
| Medical | 421 | 118 | 539 | 41% |
| Surgical | 354 | 100 | 454 | 35% |
| Dental | 184 | 3 | 187 | 14% |
| Forensic Exam | 5 | 0 | 5 | 0% |
| Decisions to withhold and/or withdraw life sustaining measures | 77 | 40 | 117 | 9% |
| Allied Health | 1 | 0 | 1 | 0% |
| Clinical Trial | 0 | 0 | 0 | 0% |
| Total | 1,042 | 261 | 1,303 | |

Table 9 below sets out the percentage of health care decisions made by the OPG in 2014-15, that were made under a guardianship appointment. In the reporting year, 769 health care decisions (89% of decisions made) were for guardianship clients. This represents 137 fewer health decisions made for guardianship clients than 906 health decisions made in 2013-14.

A further 512 decisions (39% of decisions made) were made by the OPG as statutory health attorney of last resort under s.63 (2) of the *Powers of Attorney Act 1998*. This represents a 31% increase from the 425 statutory health attorney decisions made in the reporting year 2013-14. The remainder of the decisions were made as attorney appointed for personal matters, or through the exercise of powers under s.38 of the *Public Guardian Act 2014* to consent to a forensic examination, or s.43 GAA (overriding another attorney or guardian’s decision).

Table 9: Decision-making authority, 2014-15⁶⁹

| Decision-making authority | | |
|---------------------------|----------|------------|
| | Consents | Percentage |
| Guardian | 769 | 59% |
| Statutory health attorney | 512 | 39% |
| EPA | 16 | 1% |
| S42/43 | 1 | 0% |
| Forensic | 5 | 0% |
| Total | 1,303 | |

Decisions under section 42 of the *Guardianship and Administration Act 2000*

Under s.42 of the GAA, if there is a disagreement about a health matter for an adult, and the disagreement cannot be resolved by mediation, the Public Guardian may exercise the decision-making power. A disagreement may arise between a guardian or attorney for an adult or another person who is also a guardian or attorney,

⁶⁹ It is noted that the summary of percentages does not equal 100% due to a rounding calculation. See note 28.

regarding the way power for a health matter should be exercised. There may also be disagreement between two or more eligible statutory health attorney for the adult about which of them should be the adult's statutory health attorney or how power for the health matter should be exercised.

During 2014-15, the Public Guardian made no decisions under s.42 of the *GAA*.

Decisions under section 43 of the *Guardianship and Administration Act 2000*

The Public Guardian may also exercise power for a health matter under s.43 of the *GAA*, if a guardian or attorney for a health matter for an adult: refuses to make a decision about the health matter for the adult, and the refusal is contrary to the health care principle (set out in Appendix 5), or makes a decision about the health matter and the decision is contrary to the health care principle.

During 2014-15 the OPG made one decision pursuant to s.43 of the *GAA*. This decision was in relation to an end of life matter where the existing guardian or attorney's decision for a health matter (or their refusal to make a decision) was contrary to the Health Care Principle⁷⁰ set out in Appendix 5.

Special health care

During 2014-15 the OPG was appointed on four separate occasions under s.125 of the *GAA* to represent an adult's views, wishes and interests in relation to a special healthcare matter. All four of the cases involved the sterilisation of adults with impaired capacity. Three of these were resolved during the financial year and one matter was still ongoing at the end of the financial year.

When appointed as a representative, OPG staff meet with the adult, their family and service providers (where applicable). A written submission is made to QCAT to represent the adult's views, wishes and interests regarding the administration of the special health care matter. This submission is independent from the views and wishes of family members, medical professionals and any other third parties.

⁷⁰ *Guardianship and Administration Act 2000*, Schedule 1, Part 2.

Investigations

Under s.19 of the *Public Guardian Act 2014*, the OPG has a discretionary power to investigate any complaint or allegation that an adult is being, or has been, neglected, exploited or abused, or has inappropriate or inadequate decision-making arrangements.

The OPG's primary focus in investigations is the protection of the vulnerable person with an ongoing commitment to address issues in the least intrusive manner for the person, where possible and appropriate. The OPG will not investigate matters more appropriately addressed by the Queensland Police Service, or by QCAT.

In many cases, there is a focus on ascertaining whether the decision-making arrangements in place for a person are appropriate and sufficient to protect their rights. In some cases, formal decision-making arrangements may be sought if there are none in place, or if the decision-making arrangements currently in place are not protecting the person's rights.

To carry out an investigation the OPG must identify that the person in question lacks the capacity to make decisions for the matters in question. The Public Guardian also has the formal protective power to suspend for up to three months the power of an attorney who is suspected on reasonable grounds to not be competent.⁷¹ In 2014-15, the Public Guardian suspended attorneys in 26 matters where immediate protective action was required due to significant financial or personal abuse. This is an increase from 21 suspensions in 2013-14.

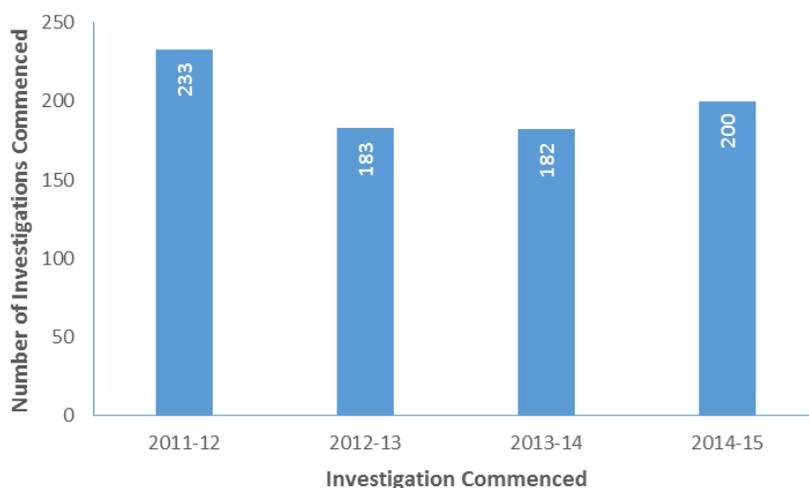
A significant development this year for the investigation team in effectively managing the investigation caseload was the introduction of an intake service through the statewide hub to receive all public contact about new investigation referrals and general enquiries. Previously the team managed this role within the investigation workload which reduced availability for specific investigations.

Investigations commenced

Figure 13 below sets out the numbers of investigations commenced over the last four years. In 2014-15 200 investigations were commenced by the OPG. This represents a slight increase from 182 investigations commenced in 2013-14. The number of investigations commenced have remained relatively steady over the years, although they have fallen slightly from the peak of 233 investigations commenced in 2011-12. This data affirms the importance of maintaining a robust investigation and complaints function to protect vulnerable Queenslanders.

⁷¹ *Public Guardian Act 2014*, s.34.

Figure 13 – Investigations commenced by financial year, 2011 - 2015⁷²

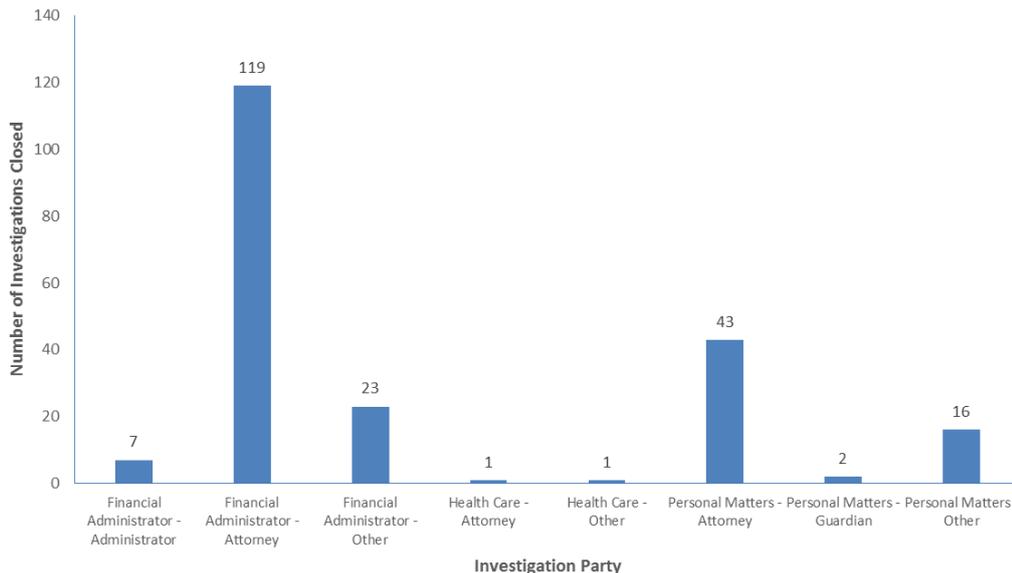


In 2014-15, the OPG also commenced 229 preliminary enquiries from referrals which did not result in investigations.⁷³ There were 93 active investigations (as at 30 June 2015) compared with just over 100 as at 30 June 2014.

Reasons for investigation

Figure 14 below shows the most common type of areas in which investigations were closed in 2014-15.

Figure 14: Investigations completed by area of investigation, 2014-15



Most matters investigated related to conduct by a financial attorney under an enduring power of attorney (119 investigations), followed by personal matters relating to the conduct of an attorney (43 investigations). A number of investigations included both areas of financial and personal matters.

⁷² Note historical figures may differ slightly from previously published figures due to corrections being made to data.

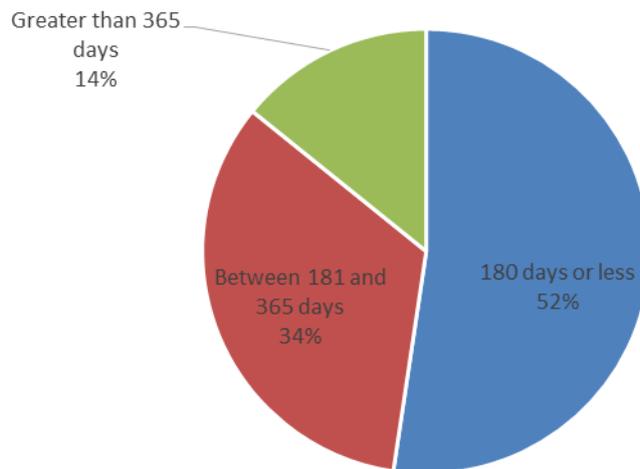
⁷³ Some preliminary enquiries may become investigations and be recorded as such in the 2015-16 reporting period.

Timeframe for investigations

Investigations conducted by the team are varied and can range from simple to complex investigations which can involve multiple stakeholders and sources of information. The Investigations team is focused upon completing investigations in a timely manner, however some circumstances require lengthy investigations to be conducted, in order to ensure a thorough investigation and resolution of the complex matters raised.

Figure 15 below indicates that during 2014-15, over half of investigations closed (52%) were closed within 180 days or less. 34% of investigations were closed between 181 and 365 days, while 14% of investigations took longer than 365 days to complete.

Figure 15: Investigations completed by time taken to complete, 2014-15



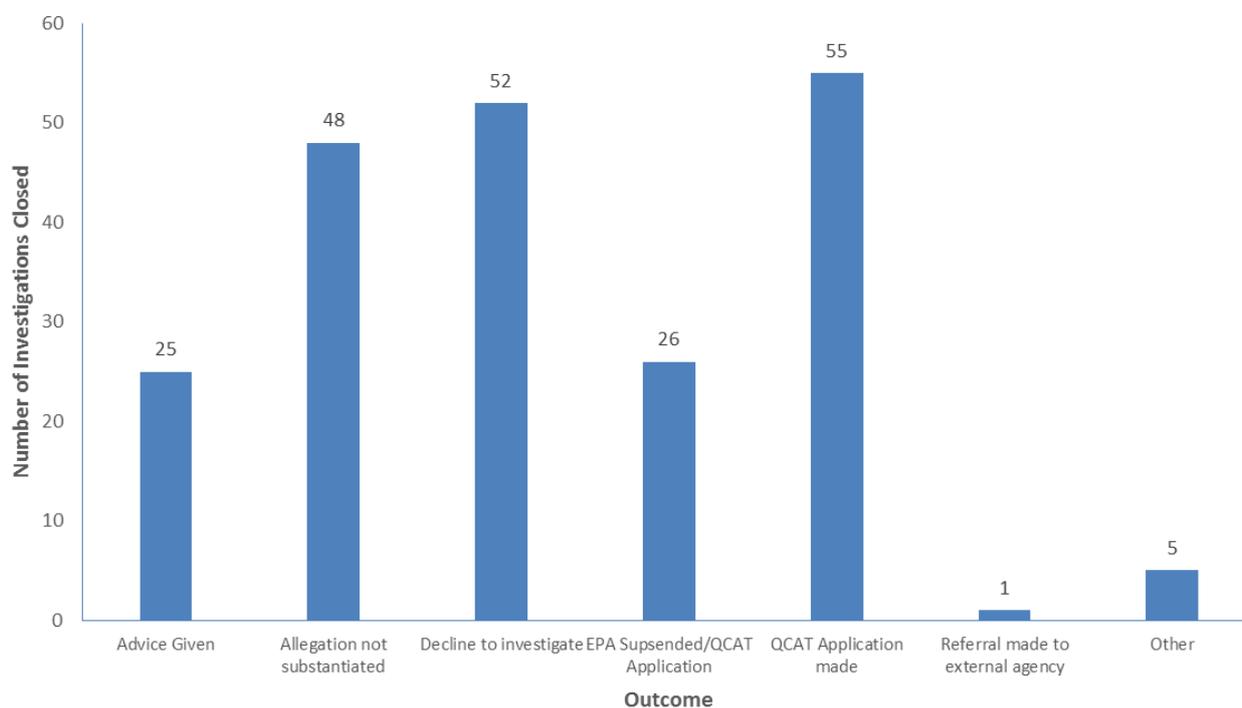
Investigation closures

Figure 16 below provides a breakdown of the reasons that investigations have been closed during 2014-15. Fifty-five of the investigations were closed on the basis that a QCAT application was made, either by the OPG for the appointment of a guardian and/or administrator, or by a third party. Twenty-six of the investigations were closed after the Public Guardian had suspended the attorney and made an application to QCAT.⁷⁴ The Investigations team declined to investigate a matter on 52 occasions, primarily as the matter was outside of the investigative powers of the OPG or a preliminary inquiry revealed there were insufficient grounds to proceed with a full investigation. Forty-eight investigations concluded on the basis the allegations raised were not substantiated.

On 25 occasions advice was given to the attorney at the conclusion of the investigation. Advice may be provided where there are appropriate support people in place who have the ability to act on behalf of the person on a formal or informal basis. One investigation was referred to another agency for action.

⁷⁴ Public Guardian Act 2014, s34.

Figure 16: Investigations completed by case outcome, 2014-15

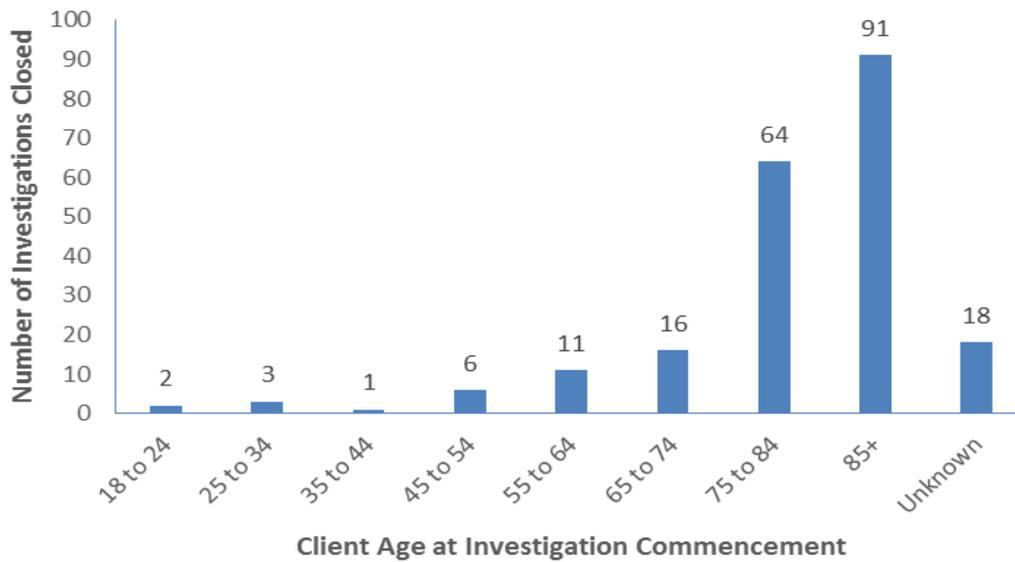


Investigations concluded

The OPG concluded 212 investigations during 2014-15, relating to 211 individual clients. Figure 17 on the next page shows that the majority of the 212 investigations that were completed during 2014-15 (91 investigations or 43%) related to clients who were over the age of 85 years, with 64 investigations concluded for those aged between 75 and 84 years of age.

Older people with impaired capacity primarily caused by dementia may be more vulnerable to neglect, abuse or exploitation. Elder abuse, particularly related to financial matters, continues to be the majority of matters referred to the OPG for investigation.

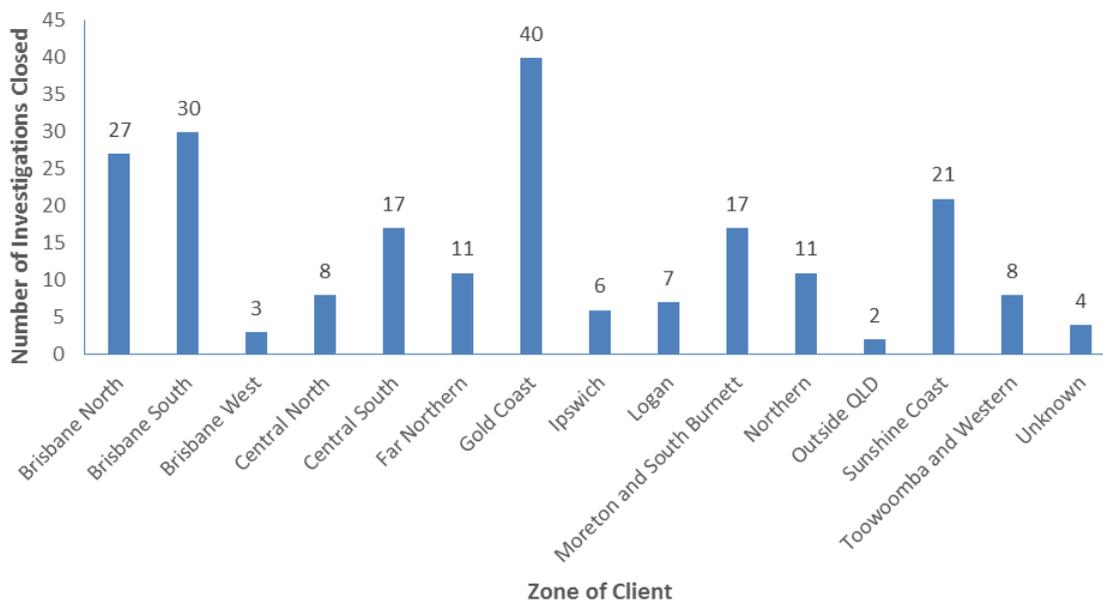
Figure 17: Investigations completed by age of client, 2014-15⁷⁵



Regional breakdown of investigations

Figure 18 below sets out the investigations completed in 2014-15 by regional location of the client.

Figure 18: Investigations completed by location of client, 2014-15⁷⁶



The Gold Coast region accounted for the greatest number of investigations (40). Investigations were conducted statewide, with 60 investigations completed across Brisbane (Brisbane North, 27; Brisbane South, 30; Brisbane West, 3); 21 investigations completed on the Sunshine Coast, and 17 investigations completed in both the

⁷⁵ Age of client was at commencement date of investigation. Note that one client is counted twice in this figure as they were the client in two investigations. This will be the case for all subsequent demographics on closed investigations.

⁷⁶ Note that the region of the client is based on the most current location of the client rather than the location of the client at the time that the investigation was completed.

Central South and Moreton and South Burnett regions. 22 investigations were conducted in the North (11) and Far Northern (11) regions. The remainder of regions had fewer than 10 investigations completed in 2014-15.

Case study 1: Ben

Ben⁷⁷ is an 80 year old widower who was living in his own home in a North Queensland town. Ben was bed bound and had high care needs that could no longer be met at home. Ben had a significant level of dementia and moved to a local nursing home. Ben had one child, a son who lived in Brisbane. Several years ago, Ben had appointed his son as attorney for financial matters under an enduring power of attorney.

The care facility issued the latest nursing home fee accounts to the attorney as directed but received no payment. When no payment was received by the nursing home for several accounts and the bond amount remained outstanding, the care facility raised concerns with the Office of the Public Guardian.

Investigations by the Public Guardian established information from medical practitioners confirming Ben had impaired decision-making capacity, enabling the Public Guardian to undertake further investigations. The Public Guardian confirmed Ben's pension had been redirected to an account in the name of the son and that no fees or bond had been paid for two months. It was established that Ben's property had been sold and the funds directed to an account in the name of the son. The investigation revealed the attorney used the proceeds from the property sale to purchase \$400,000 worth of shares in the son's name.

With mounting debts and Ben's assets removed, the Public Guardian suspended the authority of the attorney on the grounds the attorney had failed to protect the interests of Ben. The Public Trustee acting as financial attorney during the suspension period established the attorney had suffered share losses totalling \$80,000.

Following a hearing before QCAT, the Public Trustee was appointed as administrator, and the former attorney was ordered to transfer the remaining shares into the name of his father. The administrator is considering what further action may be taken to protect Ben's financial interests. All of Ben's debts have now been paid.

Case study 2: Connie

Connie⁷⁸ is a 78 year old who resided in her own home on the Gold Coast. Members of Connie's family lived elsewhere with the exception of a young niece who lived locally. The family understood that the niece was providing support and assistance to Connie. Concerns were raised to the Public Guardian that Connie was not receiving adequate care, was living in a poor condition in her home, and that she had no money to buy groceries. Medical information from Connie's doctor confirmed she had a cognitive impairment caused by dementia.

Investigations identified withdrawals from Connie's bank account which were unlikely to have been used solely for her benefit. It was also established Connie had appointed her niece as attorney under an enduring power of attorney. Connie's lawyer confirmed no records of financial transactions were being maintained as required, and that funds were being used to meet the attorney's internet gambling habit. It was confirmed

⁷⁷ The name of the adult has been changed.

⁷⁸ The name of the adult has been changed.

nearly all of \$20,000 of Connie's savings had been used. Checks with Connie's doctor indicated no formal care services had been arranged, and the lawyer confirmed she had not considered there was a need for services.

The investigator confirmed by visiting the property that Connie was living in a squalid environment and was not receiving adequate care from her attorney, who was also claiming a carer's allowance.

The Public Guardian suspended the power of the attorney, and the Public Trustee took over management of Connie's financial matters, including stopping all access to Connie's bank accounts.

During the suspension, the Public Guardian organised for Connie to have a medical assessment with her doctor, and for an aged care assessment to be conducted. This enabled Connie to receive in home support services. Funds were allocated for a cleaning service at the property and Connie commenced attending a day respite service she enjoyed after the long period of isolation in her home.

The attorney left the premises and declined to be further involved with Connie's care. With the services now in place and funds being managed, Connie is living with a level of independence and her care needs are adequately protected.

Statewide advocacy hubs

The Child Protection Inquiry recommended the establishment of advocacy hubs that were readily accessible to children and young people.⁷⁹ The Office of the Adult Guardian which merged with the visiting functions of the CCYPCG on 1 July 2014, already had existing offices in Brisbane City, Townsville and Ipswich which delivered guardianship, investigative and visiting functions to adults with impaired decision-making capacity.

On 1 July 2014, an additional office was established at South Brisbane and on 2 February 2015, a further OPG office was established in Cairns to deliver guardianship, adult and child visiting and child advocacy functions. The decision to establish an office in Cairns was made on the basis that in excess of 75% of children and young people in out-of-home care in North Queensland are Aboriginal and/or Torres Strait Islander. The location of a child advocate (lawyer) in Cairns, enables localised child advocacy support to be provided directly to children and young people, which is considered critical in order to contribute to a reduction in the over representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care.

The following services are delivered from the OPG offices located in Cairns, Townsville, Ipswich, South Brisbane, and Brisbane CBD:

- guardianship—substituted decision-making for adults with impaired decision-making capacity, including health care decision-making
- child visiting—visiting children and young people in out-of-home care
- adult visiting—visiting adults residing at visitable sites (including mental health, disability and supported accommodation)
- child advocacy—providing advocacy support to children and young people ensuring their views and wishes are heard in matters that affect them.

Statewide virtual hub

In addition to the physical OPG offices a virtual hub was established on 1 July 2014. The virtual hub is able to be contacted by children and young people seeking child advocacy support and as an avenue to make contact with their community visitor. The virtual hub is located in Brisbane and comprises two staff who can be contacted by phone, email, SMS and social media.

The key responsibilities of the virtual hub are to:

- respond to advocacy enquiries received via a range of channels including phone, email, SMS and social media
- provide support to children, including the provision of timely and accurate information and assistance
- provide information and assistance to attorneys, administrators, and other informal decision-makers regarding their responsibilities in making decisions for adults with impaired decision-making capacity
- act as triage assessment point for the investigations unit regarding allegations of potential abuse, neglect, exploitation, or inappropriate decision-making arrangements for adults with impaired capacity
- undertake referrals within the Office of the Public Guardian, and to other appropriate agencies.

During 2014-15 the virtual hub staff referred 765 enquiries received by the hub to external agencies considered more appropriate to resolve their concerns; 279 of these calls were child related matters, 87 matters concerning

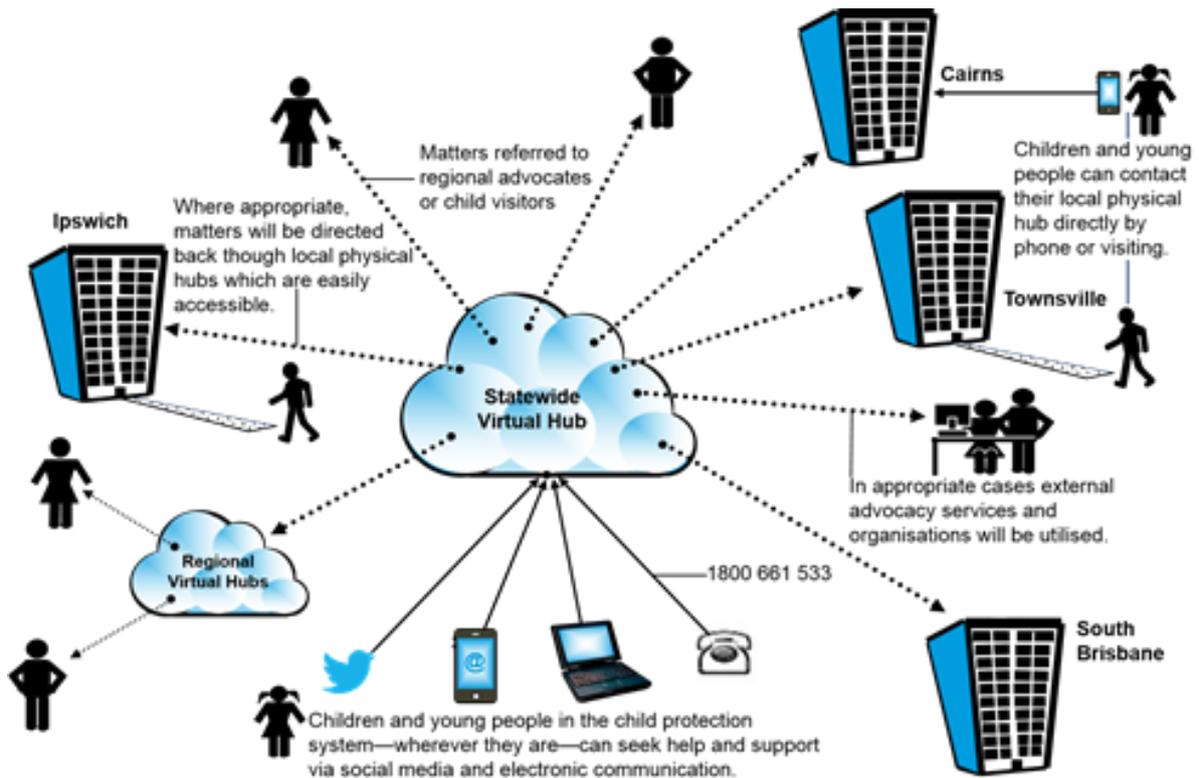
⁷⁹ *Child Protection Inquiry, Recommendation 12.8.*

adults, while the remaining 399 enquiries related to other general government or miscellaneous matters.

Child matters

In 2014-15 the virtual hub raised 297 issues which were received by the OPG via phone, email, SMS and social media contacts. Where ongoing resolution of these issues was required, they were referred to the child community visitors program or child advocates for further action. Figure 19 demonstrates the triage and referrals process from the virtual hub with respect to issues raised regarding children and young people.

Figure 19: Triage and Referrals process from the virtual hub with respect to children and young people



Adult matters

During 2014-15⁸⁰ the virtual hub responded to 246 investigation enquiries relating to adults, and conducted preliminary investigations into 98 matters. The 98 matters were then referred into the Investigations team for further assessment and action.

⁸⁰ Data for the full financial year is not available as reporting processes for the OPG were only finalised in April 2015.

Community education

Communications and engagement

Under section 12(1)(j) of the *Public Guardian Act 2014*, the Public Guardian has a statutory responsibility to advise and educate the community about the operations of the *Public Guardian Act 2014*, *Guardianship and Administration Act 2000* and *Powers of Attorney Act 1998*. The OPG also has a responsibility to provide support to children and young people in out-of-home care and to inform them of their rights and to advocate on their behalf.

Community engagement

The OPG is committed to educating and advising the public about its operations, the role and function of community visitors and child advocates, how the guardianship system works, and how to plan for the future in the event that a person is unable to make decisions about their life. This includes educating service providers and the general public by conducting education sessions for government and non-government agencies, child advocacy groups, attending disability and aged care expos, and making presentations at educational institutions, hospitals and accommodation facilities.

During 2014-15 the OPG delivered presentation skills training to OPG staff across Queensland to up-skill, and contribute to their professional development. The team also developed resources for OPG staff to use in presentations, and to provide as handouts to participants. Some of the materials developed include:

- presentation handouts
- resource kits
- factsheets
- training schedules
- statistical data.

Table 10: Community presentations, 2014-15

| Requests conducted by sector | No. of events | Percentage |
|------------------------------|---------------|------------|
| Child-related | 72 | 42% |
| Health | 28 | 16% |
| Disability | 19 | 11% |
| Community – Other | 12 | 7% |
| Mental Health | 10 | 6% |
| Justices of the Peace | 8 | 5% |
| Aged Care | 8 | 5% |
| Legal | 7 | 4% |
| University | 6 | 3% |
| Carers/Advocacy | 3 | 1% |
| Total presentations | 173 | |

Table 10 above shows that during 2014-15 the OPG conducted 173 presentations to the community. The largest sector (42%) in which presentations were made was the child sector, followed by the health industry (16%), and the disability sector (11%). Community engagement events had a combined audience of 6,549.

During 2014-15, OPG staff took part in a wide variety of community education events across the state. The Communication and Engagement team assisted in coordinating activities associated with the development and delivery of training programs to stakeholders. For example, information training sessions and forums for Justices of the Peace and Commissioners for Declarations provided information and guidance about witnessing legal enduring documents, such as Enduring Powers of Attorney and Advance Health Directives. The OPG also participated in a variety of exhibitions and events, providing information to the community about the OPG's role in the child protection system, guardianship and personal planning for the future. At these events, the OPG had the opportunity to reach a vast number of people from a variety of cultural backgrounds, and answer a variety of questions about the roles and functions of the OPG.

The OPG also facilitated information sessions to a number of services who have clients who are subject to restrictive practices, and are required to develop positive behaviour support plans. Under the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*, the OPG plays an important role in regulating and monitoring the application of restrictive practices to persons with impaired capacity. The OPG worked closely with a number of services who use restrictive practices with their clients, to help them understand the legislative requirements and ensure that these requirements were being met.

There was also significant engagement with hospitals and health services in 2014-15. The OPG health care team visited several hospitals and health services within Queensland. During the year they have provided medical and allied health practitioners with information on medical and health care decision-making issues for patients with impaired decision-making capacity, and provided education on the implications of guardianship laws for health practitioners.

In 2014-15, the OPG also provided a significant number of presentations to child-related government agencies and non-government organisations. Following the formation of the OPG on 1 July 2014 and the establishment of the new role of child advocates, the OPG has worked closely with these organisations to assist them to understand the role and responsibilities of child advocates.

Communications and marketing in 2014-15

In 2014-15, the OPG developed a range of support materials to assist in helping children and young people in out-of-home care to understand their rights, and how the OPG can provide assistance to them. As an independent statutory body, the OPG seeks to ensure children and young people in the child protection system are safe and well, and are properly cared for. The OPG aims to give children in out-of-home care an independent voice, ensuring their views are taken into consideration when decisions are made that affect them.

Printed publication materials including a stakeholder e-newsletter, website, and social media tools such as Facebook and Twitter, were also employed to educate and provide information on issues relevant for children and young people, guardianship topics, and advance decision-making documents such as Enduring Powers of Attorney.

Promotional materials produced by the OPG in 2014-15 include:

- DL brochures
- magnets, pens, and other merchandise

- ⦿ factsheets
- ⦿ posters
- ⦿ banners.

Consultation and education with non-government stakeholders in the child protection and adult guardian sectors included the distribution of a range of communication materials to the following groups:

- ⦿ recognised entities for Aboriginal and/or Torres Strait Islanders
- ⦿ community legal groups
- ⦿ schools
- ⦿ police stations and Police Beats
- ⦿ magistrates
- ⦿ court registries
- ⦿ mental health services (adult and youth).

Website and social media was also employed to assist OPG staff in engaging the community, including:

- ⦿ website information and updates
- ⦿ development and posts on Facebook and Twitter accounts
- ⦿ staff intranet updates
- ⦿ staff internal newsletter emailed monthly
- ⦿ external stakeholder e-newsletter distributed quarterly
- ⦿ OPG articles submitted to stakeholder e-newsletters.

Conferences/events

The OPG participates in key stakeholder events each year, including Child Protection Week, NAIDOC Week, Foster and Kinship Carer Week, Law Week, Seniors Week, Elder Abuse Awareness Day, and Day for Daniel. The OPG also participated in the Foster Carer Queensland State Conference 2015, managing a display booth and providing communication materials at the conference.

Joint initiatives

The OPG has been involved in a joint initiative with Carers Queensland to develop an informational video, directed at carers working with adults with impaired capacity.

Human resources

Workforce planning and performance

Staff of the OPG are both office based and home based. Office based staff are employed under the *Public Service Act 2008* and are subject to related industrial instruments aligning with Queensland Public Service Commission policies and directives. Community visitors are home based casual employees and are appointed by the OPG subject to the provisions of the *Public Guardian Act 2014*. Table 11 below sets out the numbers of staff employed by the OPG as at 30 June 2015. The organisational structure of the OPG as at 30 June 2015 has been provided at Appendix 7.

Table 11: Staff of the Office of the Public Guardian, 30 June 2015

| Officers | Number |
|---|---------------|
| Executive Management | 8 |
| Community Visiting Program | 158 |
| Guardianship | 62 |
| Legal Team | 15 |
| Investigations | 6 |
| Corporate (including HR, Finance, IT, Communications, Policy and Reporting, and Administration) | 25 |
| Total staff | 274 |

During 2014-15 the OPG continued to progress the priorities identified in the Department of Justice and Attorney General strategic plan in relation to our workforce, including development of a new five year strategic workforce plan for the OPG, scheduled to be developed in 2015–16. The plan includes:

- ⦿ streamlining and improving our recruitment and selection process
- ⦿ ensuring effective recruitment and management of virtual teams
- ⦿ ensuring appropriate and relevant induction and training for both office based and remote workers
- ⦿ developing workforce planning and performance management strategies
- ⦿ fostering a workforce of multi-disciplinary skills
- ⦿ investigating reward and recognition opportunities and ways to rejuvenate and re-skill our workforce
- ⦿ developing our workforce’s cultural capability.

OPG workforce policy and procedure is currently governed by existing Department of Justice and Attorney General (DJAG) policy and procedure.

Professional development

In 2014-15, a strong focus was placed on the development and delivery of both broad mandatory professional development and targeted skills-based professional development. This included:

- ⦿ an audit of compliance with online mandatory modules
- ⦿ anti-discrimination and workplace harassment training
- ⦿ a review of staff induction programs for both public service officers and community visitors
- ⦿ systems and software training
- ⦿ writing skills training
- ⦿ presentation skills training
- ⦿ resilience and communication training
- ⦿ recruitment panel and resume/interview training
- ⦿ Aboriginal and Torres Strait Islander cultural education
- ⦿ mandatory reporting training
- ⦿ victims of crime training
- ⦿ non-violent crisis intervention training, and
- ⦿ continuing professional development arrangements for specific roles.

Additionally, supervisors and managers received professional development specific to their responsibilities, including an internal suite of management modules as well as workshops delivered by external facilitators. Capability to manage employee performance was also a focus, including briefings around Conduct and Performance Excellence and Expectations Agreements, as well as training on conducting performance discussions.

In 2014-15, work commenced on the development of a comprehensive professional development program for the 2015-16 financial year (a combination of both internal and external delivery), to be supported by a newly-formed Professional Development Working Group. This program will include training in areas such as: vicarious trauma; health care; good decisions; managing unreasonable conduct; dealing with difficult behaviours; domestic violence; familiarisation with the new child safety foundational framework; and the initiation of work to build a suite of bite-size training/information modules to cover specific areas of knowledge relevant to OPG staff.

In 2014-15, OPG staff continued to be supported to complete further studies through the Queensland Government Study and Research Assistance Scheme, and qualifications available through the Queensland Government Departments Certified Agreement.

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Appendix 3

Statement of Standards under the *Child Protection Act 1999*

- (1) The chief executive must take reasonable steps to ensure a child placed in care under section 82(1) is cared for in a way that meets the following standards (the *statement of standards*)—
 - a) the child’s dignity and rights will be respected at all times;
 - b) the child’s needs for physical care will be met, including adequate food, clothing and shelter;
 - c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child’s positive self-regard;
 - d) the child’s needs relating to his or her culture and ethnic grouping will be met;
 - e) the child’s material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
 - f) the child will receive education, training or employment opportunities relevant to the child’s age and ability;
 - g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
 - h) the child will receive dental, medical and therapeutic services necessary to meet his or her needs;
 - i) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
 - j) the child will be encouraged to maintain family and other significant personal relationships;
 - k) if the child has a disability—the child will receive care and help appropriate to the child’s special needs.

Appendix 4

General Principles under the *Guardianship and Administration Act 2000*

1 Presumption of capacity

An adult is presumed to have capacity for a matter.

2 Same human rights

- 1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.
- 2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

3 Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

4 Valued role as member of society

- 1) An adult's right to be a valued member of society must be recognised and taken into account.
- 2) Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

5 Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

6 Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

7 Maximum participation, minimal limitations and substituted judgment

- 1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.
- 2) Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.
- 3) So, for example—
 - a) the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
 - b) to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and
 - c) a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.
- 4) Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other

entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.

- 5) However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.
- 6) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

8 Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

9 Maintenance of environment and values

- 1) The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.
- 2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom), must be taken into account.

Notes—

1 Aboriginal tradition has the meaning given by the *Acts Interpretation Act 1954*, schedule 1.

2 Island custom has the meaning given by the *Acts Interpretation Act 1954*, schedule 1.

10 Appropriate to circumstances

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

11 Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.

Appendix 5

Health Care Principle under the *Guardianship and Administration Act 2000*

Health care principle

- 1) The **health care principle** means power for a health matter, or special health matter, for an adult should be exercised by a guardian, the public guardian, the tribunal, or for a matter relating to prescribed special health care, another entity—
 - a) in the way least restrictive of the adult’s rights; and
 - b) only if the exercise of power—
 - (i) is necessary and appropriate to maintain or promote the adult’s health or wellbeing; or
 - (ii) is, in all the circumstances, in the adult’s best interests.

Example of exercising power in the way least restrictive of the adult’s rights—
If there is a choice between a more or less intrusive way of meeting an identified need, the less intrusive way should be adopted.
- 2) In deciding whether the exercise of a power is appropriate, the guardian, the public guardian, tribunal or other entity must, to the greatest extent practicable—
 - a) seek the adult’s views and wishes and take them into account; and
 - b) take the information given by the adult’s health provider into account.

Note—
See section 76 (Health providers to give information).
- 3) The adult’s views and wishes may be expressed—
 - a) orally; or
 - b) in writing, for example, in an advance health directive; or
 - c) in another way, including, for example, by conduct.
- 4) The health care principle does not affect any right an adult has to refuse health care.
- 5) In deciding whether to consent to special health care for an adult, the tribunal or other entity must, to the greatest extent practicable, seek the views of the following person and take them into account—
 - a) a guardian appointed by the tribunal for the adult;
 - b) if there is no guardian mentioned in paragraph (a), an attorney for a health matter appointed by the adult;
 - c) if there is no guardian or attorney mentioned in paragraph (a) or (b), the statutory health attorney for the adult.

Appendix 6

OPG organisational structure

