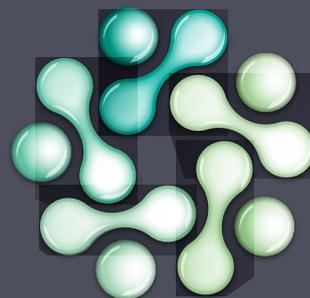
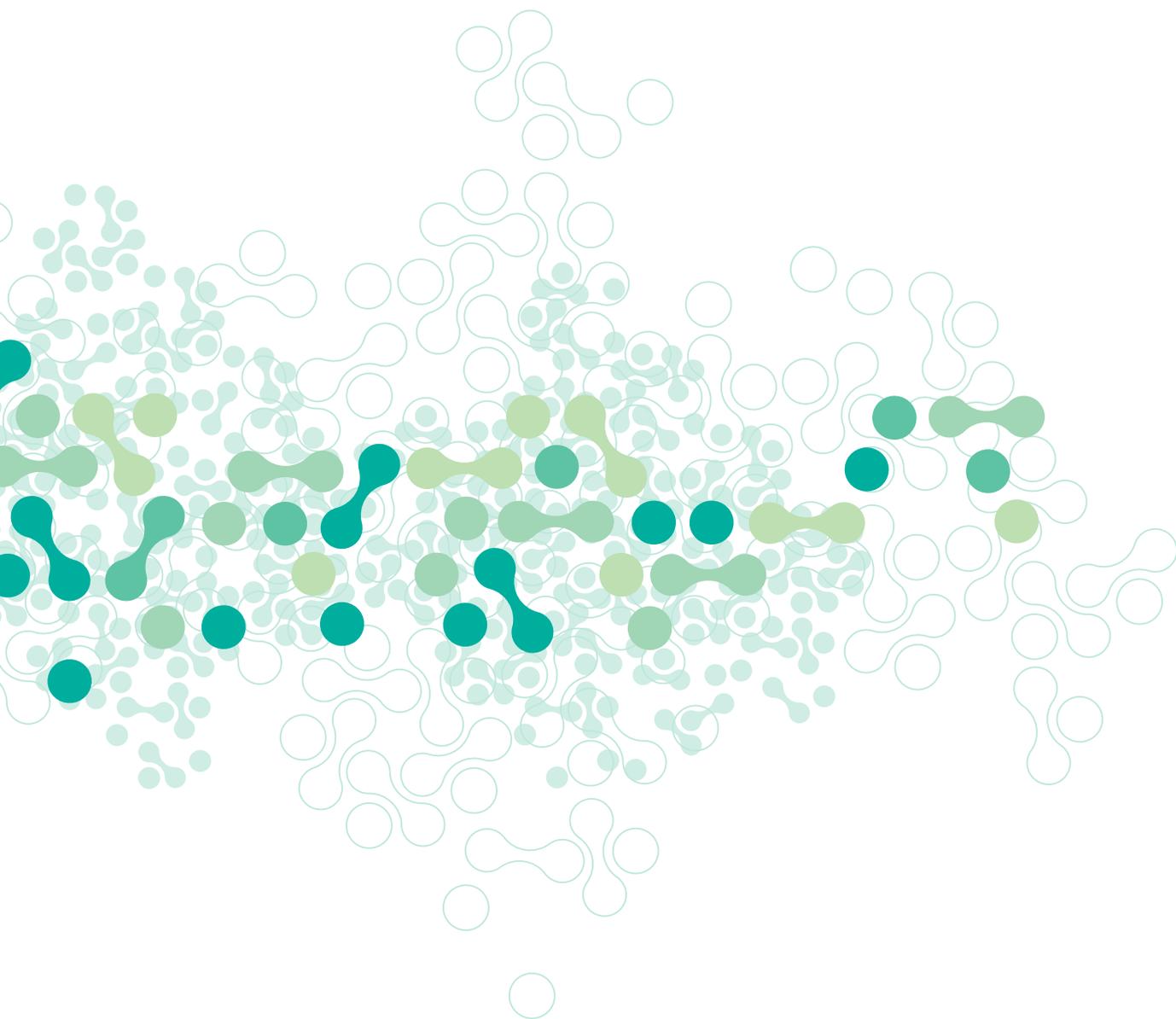




# ANNUAL REPORT 2010-11



adult guardian





adult guardian

The Honourable Paul Lucas MP Attorney-General,  
Minister for Local Government and Special Minister of State

State Law Building Brisbane Qld 4000

31 October 2011

Dear Attorney,

It is my pleasure to present to you the twelfth annual report for the Office of the Adult Guardian for the financial year ended 30 June 2011.

The report is made in accordance with the requirements of section 206 of the Guardianship and Administration Act 2000.

The report details the work of the office during the year and gives a statistical and descriptive overview of the discharge of the Adult Guardians' statutory responsibilities in protecting the rights and interests of adults with impaired capacity.

Yours sincerely,

*Lindsay Irons*

Acting Adult Guardian

The Adult Guardian's  
Annual Report  
2010-2011



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# The Adult Guardian's review

# 2010-2011

This year marks the twelfth Annual Report of the Adult Guardian tabled to the Queensland Parliament. The statutory position of the Adult Guardian was initially created under the *Powers of Attorney Act 1998* and now derives its functions and powers from this Act and the *Guardianship and Administration Act 2000*. The Adult Guardian role, and the office which supports it, occupies a unique place within the framework of human rights protection in Queensland. It serves to protect the rights and interests of a highly marginalised and disadvantaged segment of the Queensland population – people with impaired decision-making capacity.

This year has been a significant one for the Office of the Adult Guardian. The further roll-out of budget increases allocated by Government has allowed the Adult Guardian to continue implementation of necessary reforms in how service delivery occurs within the office.

The organisational restructure of the office was completed during 2010-11. It offers the potential for significant improvements in service delivery.

- Guardianship services are now delivered through four regional teams serving North/Far North Queensland, Brisbane North/Central Queensland, Brisbane South/Gold Coast, and Ipswich/Western Queensland.
- Each guardianship team is led by a Regional Manager who, with the support of a Guardianship Team Leader, provides management of staff and direct oversight of their guardianship client work. Four experienced and capable Regional Managers were recruited during the year, and commenced in November 2010. This management team is already having a significant impact within the office. Recruitment for Team Leaders is expected to take place early in 2011-12.
- The creation of other positions is also strengthening the Adult Guardian's work. Two senior officer level Director roles were created, one to oversee client services and the other to lead the agency's policy direction and the provision of specialist services (for example legal officers, and community visitors). Some capacity has been created on a temporary basis for policy review and development. Additional capacity within the legal team was created, necessitated by a significant growth in its work over the past few years.

Former Adult Guardian, Dianne Pendergast, resigned from the role in May 2011. During her more than five-year tenure in the position, Dianne worked tirelessly on behalf of people with impaired decision-making capacity, and was an outspoken advocate for their rights. She won the respect of many for the passion and commitment she brought to the role.

This year also saw the establishment of the Adult Guardian's second regional office. This office, based in central Ipswich, serves guardianship clients not just in the western suburbs of Brisbane but throughout western and south-western Queensland. It encompasses parts of the state where historically many people with impaired decision-making capacity have lived, such as Wacol, Ipswich and the Toowoomba region. The creation of the Ipswich office builds on the success of the Adult Guardian's North Queensland office, established in Townsville in 2008. The Ipswich office, which opened in June 2011, is already seeing improved linkages and communication with clients, families and service providers in the region.



Developmental work on the office's new client information management system was finalised in 2010-11. The new system is scheduled to go live in August 2011 and, when fully operational, will streamline administrative functions for staff and deliver substantially increased reporting power on the Adult Guardian's client base and the execution of its statutory functions. The existing system was established more than seven years ago, and was unable to keep pace with changes in the office's work, provide the necessary reporting functionality, or allow sufficient flexibility in modifying work processes. The new system is expected to take some months to be fully embedded within the office; in addition to more than seven years of data cleansing, staff must adapt to a new set of work processes and requirements. However the long term benefits will be significant, both at a client and a reporting level.<sup>1</sup>

A highly-successful, three-day staff and community visitor conference was held in December 2010. Speakers included Mr Hugh Carter (Queensland's Legal Friend 1986-2000), Dr Aaron Groves (Director, Mental Health), Professor Nick Lennox (Director, Queensland Centre Intellectual and Developmental Disability), Professor Karen Nankervis (Director, Centre of Excellence for Behaviour Support), Professor Adrian Ashman (Deputy President, Queensland Civil and Administrative Tribunal), Mr Luke Hatzipetrou (Clinical Psychologist) and Mr Michael Hogan (Deputy Director-General, Disability/Community Care Services and Multicultural Affairs Queensland, Department of Communities).

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1. Statistics reported on in this publication are derived from the Office of the Adult Guardian's existing client management system.



In February 2012, the Community Visitor Program will mark ten years of operation in Queensland. This Program is a small but nonetheless vital component of the state's human rights protective system for people with impaired capacity, and is oversighted by the Adult Guardian. This important anniversary provides an opportunity for reflection and consolidation. In the first half of 2011, a substantial body of work was initiated to reform the Community Visitor Program, and is expected to be completed by the end of 2011-12. The elements of this reform process are discussed in more detail elsewhere in this report. The intention of the reform is to position the Community Visitor Program so greater leverage can be gained from visitors' work to effect change for individuals, across residential sites, and ultimately throughout the disability/mental health support system.

A system of quality audits for guardianship was introduced during 2010-11. A schedule of file audits is conducted on a regular basis throughout the year, and client files are assessed against a suite of measures designed to ensure minimum standards of service delivery are met. Measures relate to items such as frequency of contact with stakeholders, regular client visits, ensuring regular health checks for clients, level of communication and consultation with key parties in decision-making, maintaining confidentiality requirements, and integrity of administrative processes. This is part of the Adult Guardian's responsibility to pursue continuous quality improvement in the delivery of its services.

This year also saw the end of the transitional period under legislation governing the use of restrictive practices on people with cognitive impairment and behaviours of concern. The full legislative scheme came into effect in April 2011. Under the legislation, the primary role of the Adult Guardian for this cohort is to provide consent to the use of certain restrictive practices, when appointed by the Tribunal to do so and in accordance with the relevant legislative provisions. The ending of the transitional period brought a significant volume of work, particularly for those guardians who have responsibility for this group of clients. The Adult Guardian also provided substantial advice to the review of legislative provisions governing the use of restrictive practices, which was commenced this year by the Department of Communities.

This year also saw the finalisation of the Queensland Law Reform Commission's review of guardianship laws, and the

report was submitted to government at the end of 2011. A number of its recommendations will have a direct bearing on the execution of the Adult Guardian's statutory functions. At the time of writing, the government is considering its response to the report.

## Acknowledgements

During my short tenure in this position, I have been grateful for the support of the Department of Justice and Attorney-General, and of colleagues internal and external to the department.

Dianne Pendergast, former Adult Guardian, resigned from the position towards the end of the 2010-11. During her more than five-years in the role, Dianne made a significant contribution to the office, our client base, and the lives of people with impaired capacity more broadly. Dianne was well respected by her staff, and her leadership of the office will be missed.

Jason Schubert, former Director Client Services, also left the office this year, and deserves special acknowledgement. Jason had been seconded to the office for more than two years, and in this time had overseen a raft of structural and policy changes. He made a significant contribution to strengthening the office culture and advancing the interests of the Adult Guardian.

As always, it is the efforts of the staff which deliver tangible benefits for Queenslanders with impaired capacity, and which give life to the Adult Guardian's role and functions as enshrined in legislation. Staff work with commitment and compassion, often in difficult circumstances where vulnerable members of the community have been exposed to situations of abuse or neglect. I commend them for their efforts.

I am particularly grateful for the support and leadership of the management team especially Danielle Booth, Brian Norman, Helen Taylor, Amy Wicks, Robert Davie, Simon Brown and Therese Craig.

**Lindsay Irons**

**acting Adult Guardian**

# Future challenges and opportunities

A number of opportunities exist to strengthen the work of the Adult Guardian, and to better respond to emerging challenges in the external environment.

## Our strategy and our organisation

### Opportunity to develop a Strategic Policy Framework for the Office of the Adult Guardian

- Scoping work has been undertaken to articulate an overarching policy framework to guide the delivery of the Adult Guardian's statutory functions.
- A coherent, comprehensive approach is needed to provide linkages and alignment with relevant legislation, broader human rights principles, and state and Commonwealth Government policy priorities.
- Operational policies and procedures would derive from and be formulated within this Strategic Framework context.
- The Community Visitor Program reform process would also form part of this overall Strategic Policy Framework.
- The Framework would take into account legislative changes arising from the Government's review of both guardianship laws and the legislation governing the use of restrictive practices.

## Alternatives to guardianship

### Opportunity to pursue alternative models to guardianship.

- The Adult Guardian has an individual statutory advocacy function under the existing legislation.
- Advocacy is routinely undertaken on behalf of guardianship clients, however this statutory function is not limited to people under formal guardianship orders.
- In addition, supported decision-making trials are underway in a number of other Australian jurisdictions. Community guardianship models are also used in some states.
- In comparison with a guardianship order, these alternatives are less intrusive into people's lives and less restrictive of their rights and autonomy. They align more closely with the United Nations Convention on The Rights of Persons with Disabilities.
- As demand on the formal guardianship system continues to escalate, options such as these will become more important.

## Working with stakeholders

### Opportunities exist to strengthen the way we work with specific stakeholder groups

- The Adult Guardian is frequently appointed for people whose family experiences significant and long-term conflict. In some cases the Tribunal may have considered this a relevant factor in appointing the Adult Guardian.
- New strategies may be helpful to assist guardians manage these client matters appropriately, communicate effectively with family members and protect the adults' rights and interests.
- Better processes can also be created to strengthen the way in which delegates of the Adult Guardian work with individual social advocates to enhance outcomes for mutual clients.
- It is important to open up new ways of communicating with our stakeholders, both at a client-level and with the community more broadly. Good decision-making goes hand-in-hand with good communication, both about our decisions and our decision-making processes.

### **Opportunities to be more proactive in the management of our guardianship client base**

- Do all current clients continue to need a formal guardianship appointment?
- How can the office be more proactive in monitoring client need, identifying cases where guardianship is no longer required, and pursuing the revocation of our appointment?
- How can we better identify alternative, appropriate decision-makers for some of our clients?
- How do we understand and grapple with the issues presented by 'non-traditional' Tribunal appointments? For example, people living in squalor, people with eating disorders, people with fluctuating capacity, clients who are Indigenous and homeless/itinerant, and people with drug addictions.

## **Response to our guardianship appointments**

### **There are challenges presented by an array of broader structural problems.**

- The ageing population and projected increase in rates of dementia have significant implications for the potential volume of work in investigating allegations of abuse, neglect or exploitation.
- Case management for people with cognitive impairments is rarely provided or funded by government. Frequently the guardianship system is called upon to fill this gap and exercise case management functions.
- A guardianship order can be an attractive option for particular service systems to pursue, as a means of relieving demand for case management, brokerage, discharge planning or advocacy services.
- An increasing number of Tribunal appointments originate from applications by hospitals seeking the assistance of the Adult Guardian to relocate patients who no longer require hospital treatment.
- There is a trend towards increasing numbers of interim guardianship orders, most of which will later become long-term appointments.
- Clients face entrenched social exclusion and poor access to mainstream goods and services enjoyed by the broader community.

## **Broader structural issues**

### **A Public Advocate-Adult Guardian joint venture to profile people subject to the guardianship of the Adult Guardian.**

- Sponsored by the Office of the Adult Guardian and undertaken by the Office of the Public Advocate, this project will provide a ten-year profile of guardianship clients (2000-2010).
- The project aims to provide a greater understanding of this population's needs and disadvantages, and will provide a sound evidence base to determine future priorities and strengthen advocacy for Queenslanders subject to guardianship orders.
- This is the first time research of this kind has been undertaken in Queensland or, as far as we can establish, nationally.
- The project demonstrates the benefits and possibilities of information-sharing between agencies with shared clients. Data from the Office of the Adult Guardian has been matched with Disability Services National Minimum Data Set.
- Quantitative and qualitative analysis of client data has been conducted.
- The project report is expected in early 2012.

## **The Adult Guardian Client Profile**





adult guardian

Our role is to protect the rights and interests of adults who have impaired capacity for a matter.

Protecting from neglect, exploitation or abuse

Investigating abuse, neglect and exploitation

Substitute decision-making (as attorney or guardian)

Approving use of restrictive practices

Consenting to a forensic examination

Seeking help and making representations

Educating, advising and conducting research

Mediating and conciliating

Community Visitors

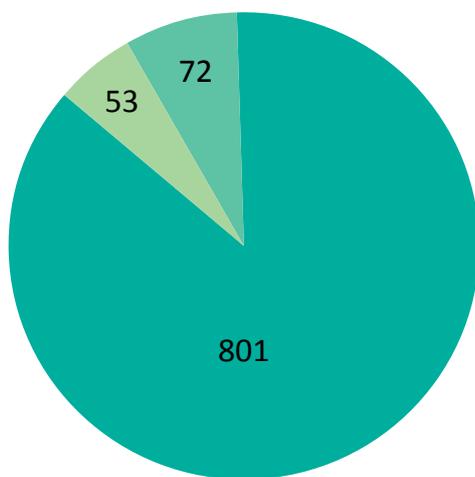
Safeguarding the interests of vulnerable adults

# Community Visitors Program

As at 30 June 2011, there were over **7,900 people** living in residential facilities which were attended by a team of **23 community visitors**.

This represents an **increase of 13 per cent** in resident numbers over the previous year.

Community Visitor Sites



 Disability Sites    
  Private Hostels    
  Mental Health sites

Community visitors attended **926 sites**, which were operated by 161 separate organisations. Of these sites approximately:

**86 per cent** (801 sites) were funded or operated by the Department of Communities for people with a disability (23 per cent of these sites are operated by the Department and 77 per cent by funded non-government organisations)

**8 per cent** (72 sites) were inpatient mental health facilities (operated by Queensland Health)

**6 per cent** (53 sites) were private hostels (operated on a for-profit basis).

Community visitors conducted over **6,100 visits** to these sites. Of these visits:

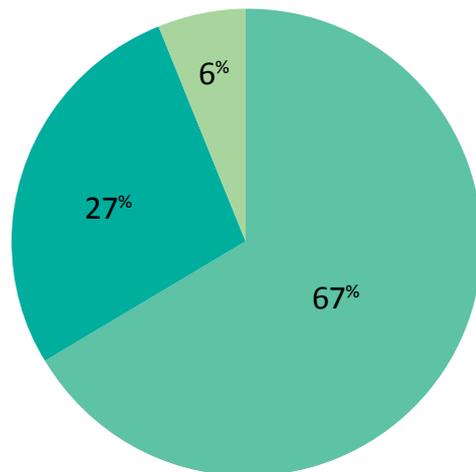
**91 per cent** were unannounced visits

**7 per cent** were scheduled visits

**2 per cent** were requested (unannounced) visits.

As illustrated below, over 600 sites were operated by non-profit organisations funded by the Department of Communities or Queensland Health. Around 250 sites were operated by the Queensland Government (either the Department of Communities' Accommodation Support and Respite Services or Queensland Health mental health services). Approximately 60 sites were operated by the for-profit sector (private residential services).

Community Visitor Sites by Sector



 Government    
  For-profit    
  Non-profit

During 2010-11, community visitors identified many issues of potential concern, including those raised by residents or staff. Some of these were enquiries which could be addressed relatively easily by the visitor. A small number pertained to more serious allegations of abuse, neglect or exploitation. These required more concerted and longer-term action by community visitors for investigation and resolution.

Of all the matters raised with community visitors, **123 concerns** could not be resolved locally by the visitor, and were referred to service management for a resolution.

Of these 123 concerns, **104 were resolved** by the service management.

The remaining **19 could not be resolved** by service management, and were formally referred for investigation to the Chief Executive Officer of either the service or of an external agency.

In addition, a significant number of referrals raised from previous years were closed during 2010-11.

Of the **19 matters referred** to other agencies:

Seven were referred to the Department of Communities (four in respect of disability issues, three in respect of housing issues).

Three were referred to Queensland Health.

Three were referred to the Adult Guardian.

Three were referred to the Office of Fair Trading (residential services).

Two were referred to the Public Trustee of Queensland.

One was referred to a non-government organisation.

Among the referrals, housing issues were significant – inappropriate accommodation (four), structural problems with housing (three) and rental/lease issues (three). This was followed by referrals in relation to financial exploitation (two), physical abuse (one), inappropriate use of restrictive practices (one), and inadequate disability support (one). Two referrals were made in respect of people with an intellectual disability inappropriately placed in mental health facilities, and two in respect of other matters.

## Reform process

During 2010-11, a Community Visitor Program reform process was initiated. To be completed by 30 June 2012, this project will see substantial changes in the way the Program is delivered, and is expected to deliver significant benefits to vulnerable people and the Queensland community.

The key aspects of this reform process are as follows:

1. Resolving matters of concern – a more robust process is being created for the resolution of concerns identified by community visitors. Formal referrals by the Adult Guardian to external agencies will be more targeted, and long-term strategies developed for their escalation and resolution.
2. Strengthening our reporting process – opportunities exist to strengthen the reports which community visitors are required to deliver at the completion of each site visit, in order to enhance their effectiveness in driving change throughout the sector.
3. Relationship with key agencies – more formal agreements will be pursued with key government and non-government agencies, to allow the sharing of information (where appropriate and lawful) and the escalation of complaints.
4. Recruitment, induction and training – current community visitor contracts expire in early 2012, and recruitment of a new team of visitors will commence early in the new financial year. A framework for induction, training, mentoring and supervision has been developed, and will be implemented in the coming year.
5. Policy and procedure development – opportunities exist to review, clarify and strengthen the policy framework and operational procedures of the Program. This work has commenced, and will continue into 2011-12. Strengthening the Program's policy foundations is particularly important, given the large (and increasing) number of visitable sites and the need to allocate Program resources carefully.
6. Strengthening our communication – a communications strategy will be implemented across government and the sector, raising awareness of the role and functions of community visitors.

The implementation of these reforms will be essential for the future viability and effectiveness of the Program, particularly given its small resource base (approximately \$1.7m) and the expectations by the wider community of what the Program should deliver.

## Legislation in action – case study

In mid-2010 Victor was admitted to an acute mental health unit after an attempted assault. He was put on an Involuntary Treatment Order (ITO) and placed in the High Dependency Unit (HDU) – a highly restrictive and isolated environment. Twelve months after his admission Victor was still in the HDU. Victor had had no leave, and had no prospect of being released in the near future.

Nursing staff raised the matter of Victor’s well-being with the community visitor. The visitor spoke with Victor and identified a number of concerns.

- Victor did not display behaviours of harm or psychosis to justify such seclusion or containment.
- He had requested but was denied supervised leave.
- He had requested but was denied a change in the treating team.
- Victor had written three letters of complaint to the director, without any change in his situation.

The visitor reported that Victor had “almost given up” and was “feeling down” because his doctor refused to allow him to have input into his treatment plan.

An independent advocate and Victor’s parents had also advocated on his behalf with the service. They said they had tried everything and were “at a loss to know what to do”.

A liaison meeting was held between the Community Visitor Program and the director of the service to discuss Victor’s rights and interests. The concerns raised were discussed in the context of compliance with the National Standards for Mental Health Services. At the conclusion of the meeting the director gave an undertaking to investigate and respond in writing to each of the concerns raised.

At time of writing this Annual Report, the following changes have occurred:

- Victor has leave to be on the general ward during the day, and approved leave on the hospital grounds and in the community.
- Victor has a new treating doctor.
- A review of Victor’s treatment will be undertaken by an independent psychiatrist.

Advice from other visitors indicates that Victor’s case is not an isolated one, and that other individuals around the state live in similar circumstances.



# Investigating allegations of abuse, neglect or exploitation

## Protecting the adult or pursuing the offender?

Investigations by the Office of the Adult Guardian focus on determining whether a vulnerable adult with impaired capacity is at risk of abuse, neglect or exploitation, or whether there are inappropriate decision-making arrangements in place for the person.

An investigation will seek to determine whether the allegations are true on balance of probabilities, insofar as is necessary to identify the level of risk and determine the action necessary to protect the adult. Where there are multiple allegations, an investigation may or may not reach a determination on every allegation in order to achieve this overarching objective.

In some cases, formal action may be taken with respect to a decision-maker's powers (for example suspending an

attorney's powers), however the purpose of an investigation is not to pursue an alleged perpetrator.

Although an investigation may uncover evidence which is referred to the police for their investigation, the purpose of an investigation is not to prepare a case for police prosecution.

The overarching purpose is to take steps necessary to protect a person with impaired capacity. This is consistent with the Adult Guardian's statutory obligation to protect the rights and interests of adults with impaired capacity. It also reflects the need to devote resources to those areas where vulnerable people are most at risk.

The office will investigate allegations using a range of methods including examining documentary evidence (including financial statements and medical reports where relevant), interviewing key parties and talking with the adult themselves where possible. It is an offence to knowingly provide false or misleading statements or documents to the Adult Guardian.



## Trends

Some common themes from investigations in previous years have continued in 2010-11:

- a number of investigations into financial abuse where the sum of money was significant (i.e. in the millions)
- allegations about a family member's conduct as an attorney acting for their elderly relative under an Enduring Power of Attorney.

Other trends observed anecdotally during 2010-11:

- an increase in referrals from financial planners and professionals in the banking industry
- an increase in financial abuse occurring through the use of internet banking due to its relative ease (i.e. compared with ATM use)
- a reduction in complaints from nursing homes in relation to unpaid fees, possibly due to nursing homes now pursuing their own legal remedies
- concerns about self-neglect or inappropriate decision-making for health care matters being identified and referred by hospital social workers.

## Statistics<sup>2</sup>

In 2010-11, there were **151 new investigations** commenced by the Office of the Adult Guardian.

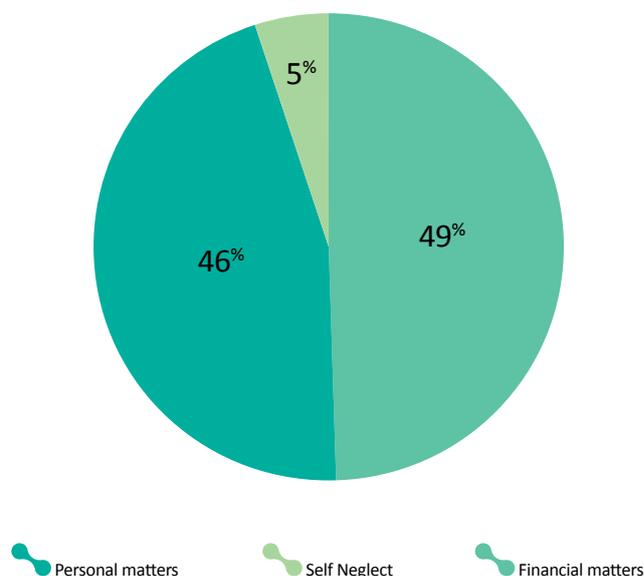
In 2010-11, **203 investigations were concluded** by the Adult Guardian. This includes investigations commenced both during, and prior to, 2010-11.

As at 30 June 2011, there were **101 active investigations** underway within the Office of the Adult Guardian.

Of all investigations concluded in 2010-11, **73 per cent** were concluded in under six months.

**Almost one-half** of all investigations concluded were undertaken into allegations that an adult with impaired decision-making capacity had been subject to (or was at risk of) **financial abuse or exploitation**. A similar number of concluded investigations were undertaken into allegations of **non-financial abuse**.

Nature of risk to person



Alleged abuse or exploitation by an attorney acting under an enduring document accounted for almost **50 per cent** of all investigations finalised during 2010-11. It accounted for more than **60 per cent** of investigations into financial matters, and more than **40 per cent** of investigations into non-financial matters.

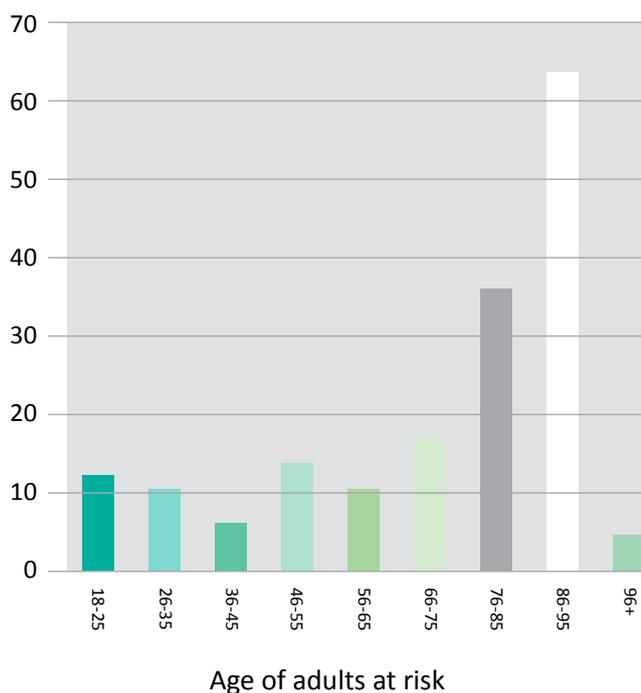
A small number of notifications were in relation to self neglect.

Allegations of exploitation on personal matters included abuse (physical, sexual, emotional), neglect of an adult's health care needs, restricting an adult's contact with significant others, or inappropriate decision-making in other areas of a person's life (for example accommodation decisions).

The majority of investigations centred on **elderly adults** with impaired capacity – 71 per cent were over 65 years of age and 41 per cent over 85 years. Only 13 per cent were aged 35 years or younger.

<sup>2</sup> Statistics reported on in this publication are derived from the Office of the Adult Guardian's existing client management system.

## Investigations



### Informal resolution

Where possible, investigators attempt to have allegations resolved informally. In 2010-11, almost one-quarter of all investigations concluded were resolved by the Adult Guardian on an informal basis, often at an early stage of an investigation. Informal resolution can occur when investigations staff:

- provide advice or information to a referent to assist them to resolve the matter themselves
- provide advice or assistance to a decision-maker to enable them to satisfactorily remedy a breach of their responsibilities
- have evidence that the person is no longer at risk of abuse or exploitation.

In some cases, the investigator may also refer a matter to another body which can more appropriately investigate the matter.

An informal resolution usually means that an investigation is terminated without the Adult Guardian having made a formal determination about whether the allegations were substantiated. An informal resolution is a positive outcome in that the rights and interests of a vulnerable person are protected with only minimal intrusion into their life (and

that of their family), and without the need for more formal intervention by the guardianship system.

An informal resolution does not mean the initial allegations were untrue or that the person was not at risk of abuse or exploitation. It means the concerns have been resolved in such a way that more formal and intrusive intervention by the Adult Guardian was unnecessary, and the person's rights and interests have been protected in other ways.

Achieving an informal resolution can require considerable time and effort. It frequently requires extensive liaison and advice to multiple parties, and a high level of communication and conflict resolution skills. An investigator will often attempt to resolve the concern by providing family members with the information they need to take action themselves to safeguard the person's rights and make appropriate decisions for them.

The Office of the Adult Guardian may also terminate an investigation if a third party makes an application for the appointment of a guardian and/or administrator to the Queensland Civil and Administrative Tribunal, and where it has been determined that there is no imminent risk to the adult. In 2010-11, this occurred in approximately **14 per cent** of cases.





## Substantiating the allegations

In other cases, an investigation will proceed to a conclusion, and in some cases the allegations will be found to have been substantiated. In 2010-11, approximately **13 per cent** of concluded investigations resulted in a finding that the allegations were substantiated.

The actions taken as a result of such a finding depend on the circumstances of the case, such as the range of appropriate options available, the level and immediacy of risk to the person, or whether or not a formal decision-maker has been in place up to this point.

In some cases, the Adult Guardian makes application to the Tribunal for the appointment of a guardian and/or administrator, where it is believed that this is necessary to protect the person's rights and interests. However, the Adult Guardian will not recommend its own appointment. It is a matter for the Tribunal to decide who the most appropriate decision-maker should be.

The Adult Guardian may also suspend all or part of an attorney's decision-making powers under s. 195 of the *Guardianship and Administration Act 2000*. Under the legislation, such a suspension may occur only if the Adult Guardian reasonably suspects an attorney is not competent (for example, has neglected their duties, abused their powers, or failed to adequately protect a person).

The suspension of an attorney's powers represents the overriding of a person's expressed choice of substitute decision-maker. Such decisions are not undertaken lightly. They occur only when there are no less intrusive means of protecting a person's rights and interests. An attorney's powers may be suspended for up to three months. During this period, the Public Trustee of Queensland is required to act as attorney for financial matters and/or the Adult

Guardian is required to act as attorney for personal/health matters. In 2010-11, only a very small number of suspensions occurred.

In some cases, an investigation by the Adult Guardian concludes that the allegations were unsubstantiated. In 2010-11, some **22 per cent** of concluded investigations found the allegations were not substantiated. This means that, on the balance of probabilities, the allegations of abuse or exploitation could not be substantiated on the available evidence.

## Terminating investigations for other reasons

In 2010-11, approximately **18 per cent** of investigations were terminated when it became evident that the adult in question did not lack capacity to make decisions for themselves. The Adult Guardian only has authority to investigate where the adult has impaired decision-making capacity, and medical evidence is obtained by investigators to confirm this is the case. In 2010-11, investigatory processes were amended so that enquiries with medical professionals to determine capacity were pursued concurrently with investigations into the allegations themselves. This is to minimise the risk to vulnerable adults and enhance the overall timeliness of investigations.

In a small number of cases, an investigation was terminated when the adult in question died. As highlighted above, this should be seen in the context that over 40 per cent of all investigations were in relation to adults over the age of 85. The Adult Guardian does not have authority to continue an investigation in respect of adults who are deceased.

# Substitute decision-making<sup>3</sup>

## Client base

As at the end of 2010-11 there were approximately **1,900 active guardianship clients** of the Adult Guardian.

In addition to guardianship appointments by the Tribunal, the Adult Guardian can also exercise substituted decision-making powers as attorney for a personal matter under an Enduring Power of Attorney or an Advance Health Directive.

In 2010-11, the Adult Guardian acted as attorney in approximately **20 cases**.

In 2010-11, the Adult Guardian accepted **288 new appointments** to act as attorney for personal matters under an Enduring Power of Attorney, in the event that the person loses the capacity to make decisions for themselves.

The Adult Guardian can also be appointed under ss.341-2 of the *Mental Health Act 2000* to act as an Allied Person for a person who is subject to the involuntary provisions of the Act. The function of an Allied Person is to help the person to represent their views, wishes and interests relating to their assessment, detention, treatment and care under the Act. In 2010-11, the Adult Guardian acted as Allied Person for 12 adults.

## Appointments

In 2010-11 there were more than **600 new guardianship appointments** to the Adult Guardian by the Queensland Civil and Administrative Tribunal.

Section 14(2) of the *Guardianship and Administration Act 2000* allows the Tribunal to appoint the Adult Guardian as guardian for personal matters only if there is no other appropriate person available for appointment for the matter.

In 2010-11 approximately **300 guardianship files were closed** by the Adult Guardian. This includes guardianship appointments revoked by the Tribunal, as well as deceased clients.

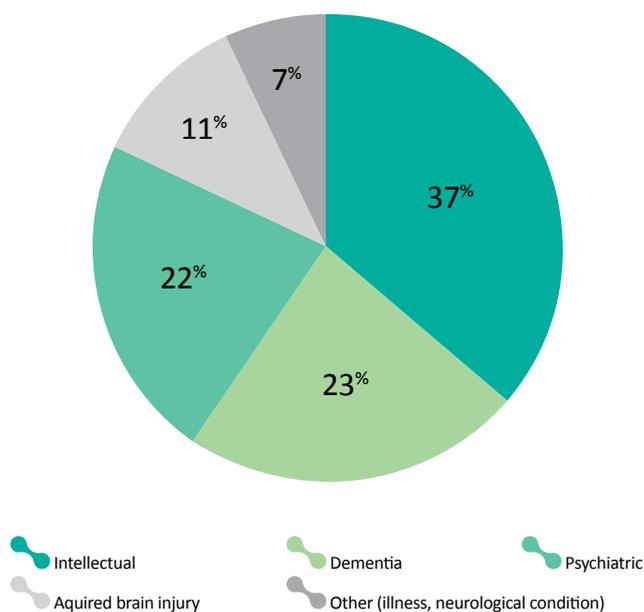
Client revocations may occur because the Tribunal determines a person no longer requires a formal guardianship order, or because another person is more appropriate to act as guardian. The Office of the Adult Guardian routinely seeks revocations of guardianship orders.

## Client characteristics

Of all guardianship clients, approximately **55 per cent** are male and **45 per cent** are female.

Consistent with previous years, people with a **primary diagnosis of intellectual disability** continue to represent the largest portion of the Adult Guardian's client groups, followed by psychiatric disability and dementia. This trend is in contrast to other Australian jurisdictions, in which older people with dementia represent the largest client group, primarily due to the ageing population.

Primary Disability type (approx)

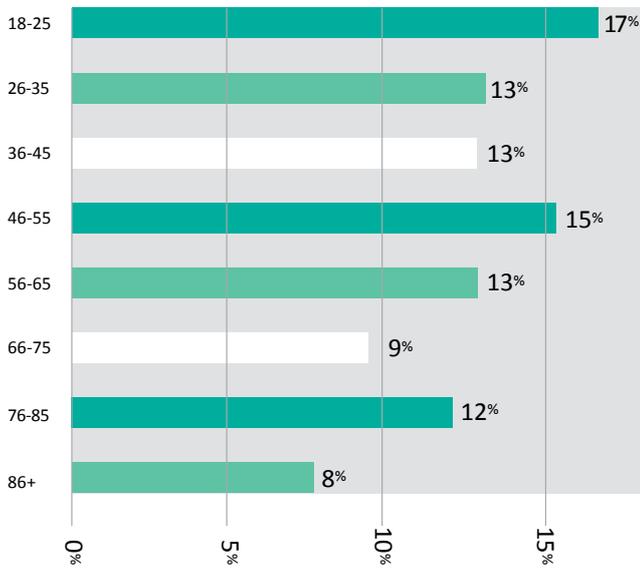


Consistent with the above, a significant proportion of clients are in the younger age groups:

- 17 per cent are under 25 years
- 26 per cent are aged 26-45 years
- 28 per cent are 45-65
- 29 per cent are aged 65 and over.

<sup>3</sup> Estimate based on the available data from the office's existing client information management system.

### Guardianship clients – age groups



As at the end of the year, the Adult Guardian held **plenary appointments** (i.e. decision-making for all personal matters) for approximately 300 adults.

As at 30 June 2011, the Adult Guardian was appointed for almost 400 adults who were subject to the use of restrictive practices:

- Approximately 330 appointments as guardian to approve the use of **restrictive practices**.
- More than 60 appointments for **seeking help and making representations** on behalf of clients who were subject to the use of containment and seclusion.

### Areas of appointment <sup>4</sup>

Consistent with previous years, the major areas of appointment in 2010-11 were for:

**Accommodation** (25 per cent)

**Service provision** (22 per cent)

**Health care** (22 per cent)

A further 26 per cent was made up of appointments for:

Restrictive practices.

Contact decisions.

All personal matters.

Legal matters.

The remainder was made up of appointments for:

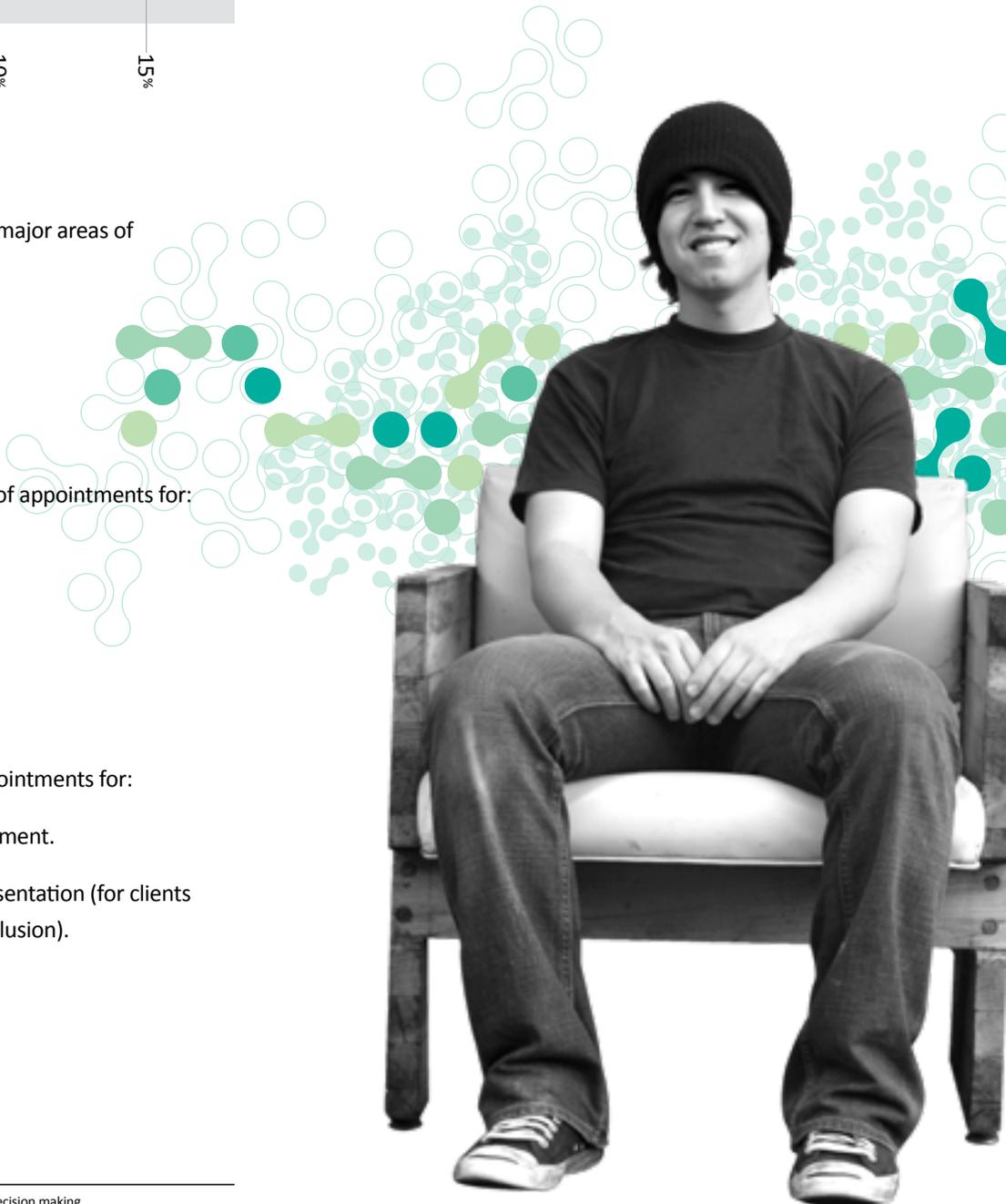
Education, training and employment.

Seeking help and making representation (for clients subject to containment and seclusion).

Other personal matters.

Licence/permit.

Day-to-day issues.



<sup>4</sup> Most guardianship clients have two or more areas of decision making under a Tribunal appointment.

# Themes and issues

## Interim appointments

During 2010-11, an increase in the number of interim appointments was noted.

*An interim order can be made under s.129 of the Guardianship and Administration Act 2000 if the Tribunal is satisfied, on reasonable grounds, there is an immediate risk of harm to the health, welfare or property of the adult, including because of the risk of abuse, exploitation or neglect (including self-neglect) of the adult.*

An interim order may be granted without the Tribunal hearing and deciding the proceeding, and may be granted for a maximum of three months.

The intention of the guardianship legislation is that interim orders be granted only when urgent action is required to protect a person's rights and interests. It represents a departure from usual process in that interim orders are generally granted "on the papers" without a formal hearing. When received by the Adult Guardian, an interim order receives urgent attention. In most cases a visit to the client and a decision occurs quickly in order to safeguard the person's health and welfare.

In the coming year, the Adult Guardian intends to more closely examine the interim orders being received by the Tribunal to identify any relevant trends to help inform its work.

## Guardianship appointments for hospital patients

An observable trend in 2010-11 was an increase in guardianship appointments for hospital patients. In most cases, the guardianship application was made by a medical practitioner or hospital social worker, and frequently the application pertained to an older person who was still in hospital but who no longer required medical treatment. Although further research is required, anecdotally some trends have been observed:

- In some cases there is no significant risk to the adult.
- Often the appointments are for 'difficult-to-place' clients (for example, those with high care needs or behaviours of concern).

- In many cases an appointment occurs after a hospital has exhausted its efforts to source appropriate accommodation for long-stay patients.
- In many cases, what is most needed for the person is advocacy, case management and discharge planning. An accommodation decision may be necessary for the person after a considerable amount of other work has occurred.

## North Queensland homeless clients

The past few years have seen a significant increase in the number of appointments for homeless or itinerant Indigenous people in North Queensland. Substance use issues, fluctuating levels of capacity, significant physical health problems, criminal justice interactions, and dislocation from families and communities are not uncommon. In most cases, no appropriate accommodation or support options exist, particularly in the person's locality. Despite substantial allocation of government resources, there are often few tangible improvements in the person's life.

The office has trialled the use of a specialist guardian to work with a small number of these complex clients in the Townsville region. There have been noticeable gains for these clients in some cases, including the securing of long-term housing for some individuals. The guardian has primarily performed the role of on-the-ground advocate, case manager and monitor of service provision.

The involvement of the Adult Guardian has been welcomed by government and non-government agencies. Some good outcomes have been achieved for a small number of clients over the past year or so. However, questions remain around the long-term sustainability of this model of guardianship. It is resource-intensive: case loads are set at roughly half other caseloads due to client complexity. It requires the guardian's presence on the ground, and is therefore only possible in the Townsville area. Importantly, there also exists a role-confusion in this model. The Adult Guardian is compelled to adopt a quasi-service provision role (primarily through case management and monitoring of services) in order to ensure improvements in the person's life. Professional and sustained advocacy is most needed for this group, and may be more effective than guardianship appointments.

## Clients with an intellectual disability

As identified above, the Queensland jurisdiction is unique in that younger clients with an intellectual disability comprise a larger proportion of the total guardianship client base relative to other states. In most other jurisdictions, older people with dementia represent the largest group. It is hoped the Adult Guardian Client Profile (a joint Public Advocate-Adult Guardian initiative discussed earlier in the report), and future research arising from this project, may shed more light on the reasons for this trend. For many clients, guardianship orders are the result of either a breakdown in families or other informal systems of support and/or the lack of appropriate early intervention and support services. Further research is needed on the relationship between these two observed trends.

## Clients subject to the use of restrictive practices

As discussed earlier, 2010-11 saw the transitional period end under legislation governing the use of restrictive practices on people with cognitive impairment and behaviours of concern. The full legislative scheme came into effect in April 2011. Under the legislation, the primary role of the Adult Guardian for this group is to provide consent to the use of certain restrictive practices, when appointed by the Tribunal to do so and in accordance with relevant legislative provisions.

A number of questions arise from the Adult Guardian's work with this client group:

- Can more families be supported to take over the consent role currently exercised by the Adult Guardian for some clients? Anecdotally, the office is informed the Adult Guardian holds restrictive practices appointments for approximately 60 per cent of all people subject to the use of restraint.
- How can services be supported in their quality improvement processes, to ensure the least restrictive options continue to be considered and implemented, so that the use of restrictive practices continues to diminish over time? Anecdotally, a level of 'reform fatigue' has been observed in the sector.

- How can the Adult Guardian strengthen and streamline the exercise of its statutory role for this client group, and make better use of the available clinical expertise in relation to positive behaviour support?
- How can the Adult Guardian work more closely with the sector to consistently communicate its expectations with respect to how requests for the use of restrictive practices are considered?

At the time of writing this report, the Department of Communities is continuing to review the restrictive practices provisions of the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*. The Adult Guardian has provided substantial advice to government in this process.

## Other opportunities for future work

Opportunities exist to strengthen previous work commenced by the office to facilitate closer working arrangements with individual social advocates, to improve outcomes for mutual clients.

New possibilities, such as the development of models for statutory individual advocacy, supported decision-making and community guardians, are being used or trialled in other Australian jurisdictions. Learnings from these will be reviewed, and the scope for integration into the current framework will be assessed in the future.

It has also been identified that a clearer and more effective strategy for managing client matters where family members are in significant and long-term conflict is needed.

## Making health care decisions

During 2010-11, the Office of the Adult Guardian received over **2,400 enquiry calls** in relation to decision-making for health care matters. This represents an **8 per cent** increase over the previous year. Of these calls:

- **Almost 50 percent** resulted in a health care decision being made by the Adult Guardian (1,160 decisions).
- The remainder did not require a decision. Most were resolved through the provision of information or advice to medical professionals or families (1,260 enquiries).

The health care decisions included **130 consents** to the withholding or withdrawing of life-sustaining measures, an increase of approximately 30 per cent over the previous year. This is directly linked to the substantial body of work undertaken by Queensland Health over the past

two years in educating medical practitioners about their responsibilities under the guardianship legislation with respect to these issues.

The Adult Guardian received **26 requests** from medical professionals to make a health care decision where a guardian or attorney had either refused to make a decision and the refusal was contrary to the Health Care Principle, or had made a decision which was contrary to the Health Care Principle (i.e. under s. 43 of the *Guardianship and Administration Act 2000*).

- Decisions were made by the Adult Guardian in 7 of these cases.
- The Adult Guardian did not make a decision in the remaining 19 cases. These were resolved in other ways, such as through the provision of information, advice or support to medical professionals and/or family members to facilitate an informal resolution.



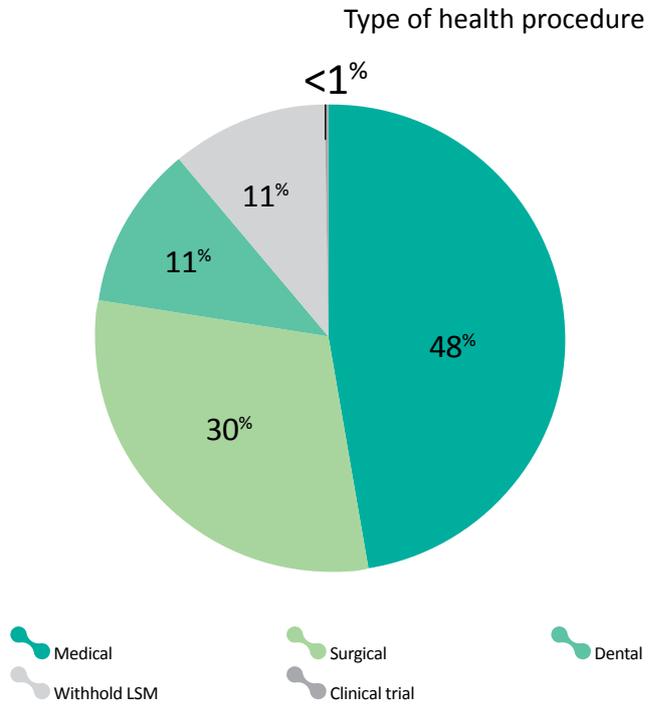
The Adult Guardian was not required to exercise powers under s. 42 of the *Guardianship and Administration Act 2000* to make a health care decision where there was disagreement between guardians or attorneys.

**Two appointments** were made by the Queensland Civil and Administrative Tribunal under s.125 of the *Guardianship and Administration Act 2000* for the Adult Guardian to represent an adult’s views, wishes and interests in a **special health care matter**. Both of these matters related to potential sterilisations of women with impaired capacity and both matters were still ongoing as at 30 June 2011. One additional appointment as representative for special health care, which was carried over from 2009-10, was resolved during 2010-11.

The Adult Guardian provided consent in **two cases** for a forensic examination to be conducted under s. 198A of the *Guardianship and Administration Act 2000*. Both cases were in relation to an alleged sexual assault of a person with impaired capacity.

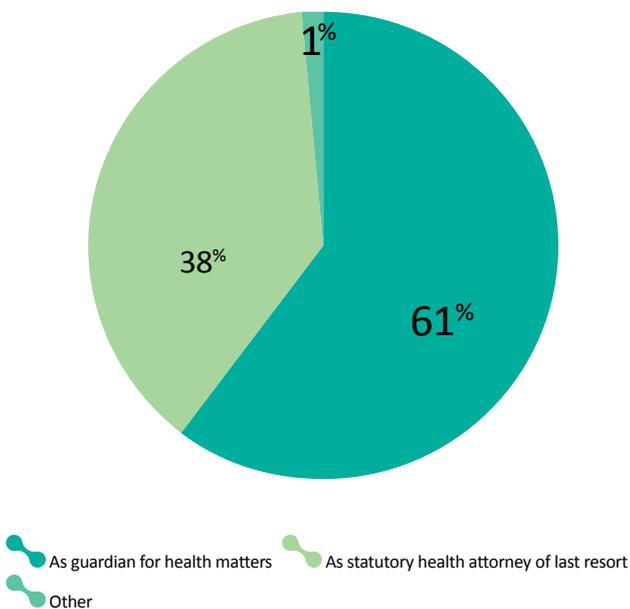
As shown below, approximately 60 per cent of health care decisions were made on behalf of a person for whom the Adult Guardian held a guardianship appointment. The remaining decisions were made by the Adult Guardian as Statutory Health Attorney of last resort under s. 63(2) of the *Powers of Attorney Act 1998*.

As illustrated below, most health care decisions were made in relation to medical and surgical procedures.

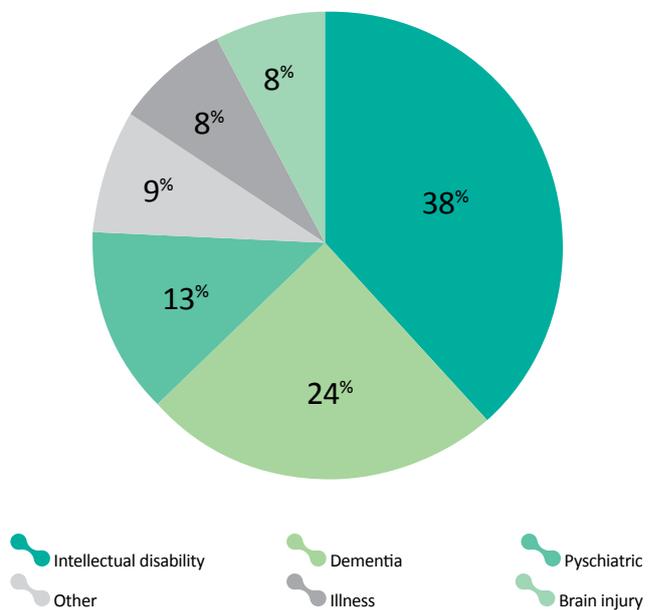


Almost 40 per cent of all people for whom the Adult Guardian made a health care decision had an intellectual disability. A further 24 per cent were for people with dementia. This is consistent with relative proportions within the Adult Guardian’s guardianship client base.

Health care decision making



Nature of impaired capacity





## Protecting the legal rights of clients

Throughout 2010-11, approximately **9 per cent** of the Adult Guardian's total guardianship client base had active legal matters pending in court at any one point in time. However, the number of guardianship clients with ongoing legal matters during the year was significantly higher. As at 30 June 2011:

- The Adult Guardian held appointments for legal matters for almost 300 guardianship clients, representing some 16 per cent of the total client base.
- The Adult Guardian held plenary appointments for a further 300 guardianship clients. Some of these will also have legal matters current.

In addition:

- There were **159 new legal files** opened during 2010-11.
- There were **over 1,100 court events** for guardianship clients (an average of 22 per week).
- Legal officers of the Office of the Adult Guardian attended a total of **176** of these court events during 2010-11.

*The total of 1,100 court events during the year is significant. It represents more than 580 court events for every 1,000 guardianship clients. This is likely due to several factors, including the greater vulnerability that people with impaired capacity face in relation to the criminal justice system. In addition, navigating the criminal justice system is more complex for this client group – the representation of clients' interests in court may take a greater number of hearings over a longer period of time, relative to the general population.*

As at 30 June 2011, there were approximately **172 clients** with current legal matters. Of these, approximately **23 clients** (13 per cent) were *legal-only* appointments. For the remaining 149 clients, the Adult Guardian held other appointments in conjunction with an appointment for legal matters.

In regard to the nature of these 172 clients with active legal matters:

- **62 per cent** – criminal justice (107 cases)
- **9 per cent** – child protection (15 cases)
- **9 per cent** – domestic violence (15 cases)
- **5 per cent** – family law (8 cases)
- **3 per cent** – victims of crime (5 cases)
- **13 per cent** – other (22 cases - guardianship, mental health and civil matters)



## Legal officers of the Office of the Adult Guardian

A small legal team of three Senior Legal Officers operates within the office. In addition to overseeing many of the client cases with active legal matters, legal officers work closely with the delegated guardians, and provide support and advice to the guardians in protecting the legal rights of their clients.

## Criminal justice matters

Approximately **85 per cent** of all criminal justice matters relating to guardianship clients are dealt with in the Magistrates Court. Many of these matters are in relation to some form of public space offence. Some matters may be referred to the Special Circumstances Court in Brisbane, however most matters will be resolved in the Magistrates Court, and normally result in the person receiving a fine and accumulating a State Penalties Enforcement Registry (SPER) debt.

SPER debts for clients of the Adult Guardian are problematic:

- Most clients of the Adult Guardian are impecunious and rely solely on a pension for their income. Many are unlikely to ever pay off their debt, and the impost of even small weekly payments will have significant impacts for these individuals.
- Due to their impaired decision-making capacity, many clients of the Adult Guardian with SPER debts are unable to successfully comply with the available alternatives (community service orders or good behaviour orders).

The remaining 15 per cent of criminal justice matters are indictable offences, and are dealt with in higher courts. Some of these may be referred to the Mental Health Court, which may make a determination as to soundness of mind or fitness to plead under the *Mental Health Act 2000*.

As at 30 June 2011, no guardianship clients had active matters in the Queensland Supreme Court.

In the conduct of criminal justice matters, the role of the Adult Guardian legal officers is to:

- source legal representation for the client, including making applications for Legal Aid Queensland grants of aid
- oversight the matter
- ensure all the relevant issues are examined
- provide support and instruction to legal practitioners
- make submissions as a friend of the court in respect of future options available to the Adult Guardian for protecting the rights and interests of the client
- act on behalf of the Adult Guardian in court proceedings.

The presence of the legal officers in court, as representatives of the Adult Guardian, frequently has an important impact at the time of sentencing. Officers can provide advice to the court as to the service or treatment options identified for the person, upcoming decisions with respect to their personal matters, and any other action to be undertaken by the Adult Guardian to safeguard the person's rights and interests. Without this presence and advice, clients who are sentenced in the Magistrates Court are likely to receive harsher sentences.

## Child protection matters

At any one point in time during 2010-11, child protection matters comprised some 11 per cent of all guardianship clients with legal matters on foot.

- Most of these cases involved clients with a mental illness or intellectual disability who are the parents of young children.
- Indigenous women were overrepresented in this group.
- Women who were themselves in the child protection system as children were overrepresented in this group.

Legal officers of the Adult Guardian work to promote the clients' rights and interests in respect of two key issues: restricted access to their children in care; and the loss of long-term guardianship of their children.

Although this client group is relatively small, some anecdotal observations can be made in relation to the legal issues they face:

- In general, legal practitioners working in the child protection jurisdiction have little recognition or understanding of the issues facing adults with impaired decision-making capacity. Frequently the adults will have no legal representation.
- There is also limited understanding within the disability support sector that the legal rights of this group of parents are potentially compromised.
- A guardianship order in place for the parent is frequently taken as prima facie evidence of the level of risk to the child, and as sufficient grounds for automatic removal or restricted access.
- This client group has no access to advocates who can represent their interests in the child protection jurisdiction.
- Parenting programs designed for this client group are frequently not available, so these clients face further disadvantage.
- It is noted that, where possible, the child protection system works to facilitate the reunification of children with their parents. However, the experience of clients of the Adult Guardian is that the child protection system works against reunification.

## Domestic violence matters

At any time during 2010-11, domestic violence matters comprised some 7 per cent of all guardianship clients who have active legal matters. Clients may be either the aggrieved party or the respondent in these cases. In most cases, where guardianship clients are the aggrieved party, the respondents are usually the clients' immediate family members. Clients with domestic violence matters are usually ineligible for a grant of aid under Legal Aid Queensland, despite the fact they usually cannot represent their own interests in court.

## Other activities of the Office 2010-11

### Education and Advice

Under the *Guardianship and Administration Act 2000*, the Adult Guardian has a responsibility to educate and advise people about the operation of the guardianship legislation. During 2010-11, staff of the office conducted or participated in more than 150 educational events. These included:

- Training sessions for the Justices of the Peace Branch (Department of Justice and Attorney-General).
- Participation in six Planning for Life Forums, in collaboration with the Attorney-General, Queensland Civil and Administrative Tribunal, and the Public Trustee of Queensland. These were held at Rockhampton, Roma, Kallangur, Gold Coast, and Brisbane South (2).
- Attendance at relevant disability and aged care expos.
- Presentations at educational institutions and hospitals.
- Presentations at aged care, disability and advocacy services.

In total it is estimated that:

- More than 3,300 people attended educational sessions conducted by staff.
- More than 400 people attended Planning for Life Forums in which staff participated.
- More than 3,200 people attended expos in which staff participated.

The former Adult Guardian, Ms Dianne Pendergast, was actively involved in conducting presentations and speaking at a wide range of forums and conferences.

### Guardianship Information Service

During the year, the office continued to implement the Guardianship Information Service, designed to provide free information to family members and friends who are appointed by the Tribunal to make personal and health care decisions for adults with impaired capacity. The service was launched in August 2010, and some communications materials were developed. It is anticipated that in the coming year, a handbook/s will be developed for use by

non-statutory decision makers. The office will also consider broadening the scope of the Service to people who make decisions for others on an informal basis (that is, without a formal Tribunal appointment).

### Participation in research

Under the *Guardianship and Administration Act 2000*, the Adult Guardian has a responsibility to conduct research into the guardianship legislation. During 2010-11 the Office of the Adult Guardian participated in a number of research projects, including an ARC Linkage Project: *Withholding and Withdrawing Life-Sustaining Treatment for Adults Lacking Capacity: enhancing medical decision-making through doctors' compliance with the law*. This project is led by the Queensland University of Technology.



## Appendix 1: Non-financial performance measures

There were three non-financial performance measures for the Office of the Adult Guardian:

Measure	Target 2010-11	Actual 2010-11	Target 2011-12
Percentage of decisions made by guardians affirmed following internal review <sup>5</sup>	90%	100%	Discontinued
Percentage of investigation matters referred to Adult guardian completed within six months <sup>6</sup>	75%	73%	Discontinued
Percentage of quality assurance audits of the delivery of guardianship services that meet targets <sup>7</sup>	80%	80%	80%

### Non-financial performance measure targets for 2011-12

Measure	Target 2011-12
Average time to complete referred investigations (months)	5.5
Percentage of quality assurance audits of the delivery of guardianship services that meet targets	80%

## Appendix 2: Financial statement

The operations of the Office of the Adult Guardian are funded from the Queensland Government's Consolidated Fund and by the Public Trustee of Queensland. The contribution from the Public Trustee of Queensland has been in place since the inception of the office, on unconditional terms and without any impact on the independence of the Office of the Adult Guardian from the Office of the Public Trustee. The Director-General of the Department of Justice and Attorney-General is the Accountable Officer pursuant to the *Financial Administration and Audit Act 1977*. The full financial details relating to the operations of the office appear in the Annual Report of the Department of Justice and Attorney-General for 2010-11.

### Financial summary – Office of the Adult Guardian (incl. Community Visitor Program)

	Actual (000s)
<b>Income</b>	<b>10,872</b>
Employee expenses	9,564
Supplies and services	1,181
Grants and subsidies	11
Depreciation	116
Total operating expenditure	10,872
<b>Operating result</b>	<b>0</b>

<sup>5</sup> This measure is discontinued from 1 July 2011 because it deals with very small numbers and does not provide a strong indication of service efficiency or effectiveness.

<sup>6</sup> This timeliness measure is discontinued from 1 July 2011. It is replaced by a measure that evaluates timeframes as an average rather than a percentage.

<sup>7</sup> New performance measure in 2010-11.

### Appendix 3: Organisational chart



## Appendix 4: The Adult Guardian's statutory role and functions

The Adult Guardian was established as an independent statutory officer under the *Powers of Attorney Act 1998*, now contained in the *Guardianship and Administration Act 2000*. The *Mental Health Act 2000* added a power to act as allied person<sup>8</sup> for an adult with a mental illness who is under an involuntary treatment order.

The staff of the Office of the Adult Guardian are public servants. The office is a business unit of the Department of Justice and Attorney-General. Officers are given statutory delegations from the Adult Guardian to make certain decisions and accordingly represent the Adult Guardian in the fulfilment of their duties.

The statutory role of the Adult Guardian is to protect and promote the rights and interests of adults with impaired decision-making capacity for a matter. Adults with impaired decision-making capacity may have:

- an intellectual disability
- an acquired brain injury
- a psychiatric disability or
- an organic or deteriorating condition that affects capacity (such as dementia).

The statutory functions are set out in section 174 (and other relevant sections) of the *Guardianship and Administration Act 2000* and include –

- protecting adults with impaired capacity from abuse, neglect or exploitation
- investigating allegations of abuse, neglect or exploitation of adults with impaired capacity
- investigating complaints about the actions of attorneys under Enduring Powers of Attorney, guardians or administrators
- acting as guardian of last resort under an order of the Queensland Civil and Administrative Tribunal where there is no family or friends available or appropriate to act

- as Statutory Health Attorney<sup>9</sup> of last resort
- as personal attorney of last resort when the Adult Guardian has accepted an appointment under an Enduring Power of Attorney or Advance Health Directive
- making representations or seeking assistance from agencies on behalf of adults with impaired capacity
- informally mediating or conciliating disputes between attorneys and between private guardians or between attorneys and guardians and others, including health care disputes, if the Adult Guardian considers this appropriate to resolve issues
- educating and advising people about the two Acts, and in particular on the role of the Adult Guardian.

The Adult Guardian also administers the Community Visitor Program on behalf of the Department of Justice and Attorney-General.

8 The function of an "allied person" is set out in the Mental Health Act 2000 Chapter 9 Part 1: "The function of an involuntary patient's allied person is to help the patient to represent the patient's views, wishes and interests relating to the patient's assessment, detention and treatment under this Act".

9 The Powers of Attorney Act 1998 defines a Statutory Health Attorney as the first, in listed order, of a range of people who is readily available and culturally appropriate to make decisions about a health matter. In order these are spouse in continuing relationship, unpaid carer, close friend or relative, and Adult Guardian as last resort.

## Appendix 5: The General Principles and the Health Care Principle

(Guardianship and Administration Act 2000)

### The General Principles

#### 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. **Valued role as a 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.

#### 4. Participating in community life

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

#### 5. 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.

#### 6. Maximum participation, minimal limitations and substituted judgment

(1) An adult's rights 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 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 of 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.

#### 7. Maintenance of existing supportive relationships

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

## 8. 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.

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<sup>10</sup> or Island custom<sup>11</sup>) must be taken into account.

## 9. 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 be the adult's characteristics and needs.

## 10. Confidentiality

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

## 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 adult 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 well-being; 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 right –

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 adult guardian, tribunal or other entity must, to the greatest extent practicable –
  - (a) seek the adult's views and wishes and take them into account;
  - (b) take the information given by the adult's health provider into account.
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.

<sup>10</sup> Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships – see *Acts Interpretation Act 1954*, section 36.

<sup>11</sup> Island custom, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships – see *Acts Interpretation Act 1954*, section 36.

## Office of the Adult Guardian

Postal Address: PO Box 13554, George Street  
BRISBANE QLD 4003

Street Address: Level 3  
Brisbane Magistrates Court  
363 George Street  
BRISBANE QLD 4000

Telephone: (07) 3234 0870

Callers outside Brisbane: 1300 653 187

Facsimile: (07) 3239 6367

Email: [adult.guardian@justice.qld.gov.au](mailto:adult.guardian@justice.qld.gov.au)

Internet: [www.justice.qld.gov.au/guardian](http://www.justice.qld.gov.au/guardian)

## Guardian Information Service

For enquiries from private guardians:

Phone: 1300 447 624 (1300 GIS OAG)

Email: [guardianshipinfo@justice.qld.gov.au](mailto:guardianshipinfo@justice.qld.gov.au)

Face to face consultations with the Guardian Information Service can also be arranged.

## Community Visitor Program

Postal Address: GPO Box 149  
BRISBANE QLD 4001

Street Address: Level 3  
Brisbane Magistrates Court  
363 George Street  
BRISBANE QLD 4000

Telephone: (07) 3406 7711

Callers outside Brisbane: 1300 302 711

Facsimile: (07) 3109 9179

Email: [community.visitorprogram@justice.qld.gov.au](mailto:community.visitorprogram@justice.qld.gov.au)

## North Queensland Regional Office

Postal Address: PO Box 450

Street Address: Commonwealth Centre  
Level 2, Red Entrance  
Corner Stanley and Walker Streets  
Townsville Qld 4810

Telephone: (07) 4799 7600

Facsimile: (07) 4799 7607

## Ipswich Regional Office

Postal Address: PO Box 999  
Ipswich Qld 4305

Street Address: Ipswich Tower Central  
114 Brisbane Street  
Ipswich Qld 4305

Telephone: (07) 3884 6650

Facsimile: (07) 3884 6672





adult guardian