

Department of Housing and Public Works

Submission on the future directions for housing and
homelessness in Queensland

Public Guardian
July 2016

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory body established to protect the rights and wellbeing of vulnerable adults with impaired decision-making capacity, and children and young people in out-of-home care (foster care, kinship care, residential care) and 'visitable sites'.

The OPG provides an important protective role in Queensland by administering a community visitor program, which provides state-wide visiting services to:

- adults with impaired decision-making capacity residing in government funded facilities and some private hostels, and
- children and young people in out-of-home care or staying at a visitable site, including residential facilities, detention centres, corrective services facilities, and authorised mental health services.

The OPG also supports children and young people in care through the child advocacy program. This program gives children and young people engaged with the child protection system an independent voice, ensuring their views are taken into consideration when decisions are made that affect them, thereby implementing a key element of the United Nations *Convention on the Rights of the Child*.

The community visitors and child advocates provide an oversight mechanism to ensure that the Charter of Rights for a child in care under the *Child Protection Act 1999* are upheld. This includes upholding the rights of children and young people to be provided with a safe and stable living environment, and to be placed in care that best meets their needs and is culturally appropriate.

The OPG also works to protect the rights and interests of adults who have impaired capacity to make their own decisions, recognising that everyone should be treated equally, regardless of their state of mind or health. The OPG has a direct role in implementing obligations and ensuring rights as prescribed by the United Nations *Convention on the Rights of Persons with Disabilities* are upheld.

The OPG's legislative obligations with respect to adults with impaired capacity are to:

- make personal and health decisions if the Public Guardian is their guardian or attorney
- investigate allegations of abuse, neglect or exploitation
- advocate and mediate for adults with impaired capacity, and
- educate the public on the guardianship and attorney systems.

When appointed by the Queensland Civil and Administrative Tribunal as guardian, the Public Guardian routinely makes complex and delicate decisions on health care and accommodation, and guides adults through legal proceedings in the criminal, child protection and family law jurisdictions.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* set out the OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision-makers under an Advanced Health Directive or an Enduring Power of Attorney.

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Department of Housing and Public Works (DHPW) Discussion Paper, *Working together for better housing and sustainable communities* on the development of a housing strategy for Queensland.

The OPG helps to protect the rights of adults with impaired capacity, and children and young people in out-of-home care (foster care, kinship care), residential care and youth detention. The OPG strongly supports the development of a strategy that addresses the housing needs of Queenslanders with vulnerabilities. For these people with vulnerabilities, the lack of adequate and appropriate housing has a substantial impact upon their ability to overcome disadvantage. The OPG fully supports that access to housing can be life changing, and is a critical linchpin in ensuring the success of other areas of service delivery, such as health, child and family, disability, aged care, education, employment and justice services.

However, while the discussion paper opens with the declaration that ‘every Queenslanders has the right to have a place to call home’, this is sadly, not a reality for many OPG clients. Lack of access to appropriate and affordable housing remains a persistent and unresolved issue for many of OPG’s clients.

In particular, while the discussion paper highlights various groups of persons with vulnerabilities who need to be considered within the strategy, it is notable that there is no *express* reference to persons with impaired capacity as a recognised group of persons with vulnerabilities. Persons with impaired capacity often have high or complex needs, and these needs remain invisible to the general public, and are often viewed as insoluble problems within mainstream service provision. Ongoing invisibility within the strategy risks perpetuating these injustices, and the lack of access to appropriate housing that this cohort faces on a regular basis.

The OPG has reviewed the discussion paper and has raised a number of issues below to assist in the development of a new housing strategy. While key issues within the paper have been taken into consideration in developing our response, this submission primarily aims to highlight key issues for OPG’s clients. The OPG response does not provide direct responses for each question raised in the discussion paper.

The OPG strongly supports strategies that seek to address ways to provide vulnerable people with access to housing, and support to maintain that housing. We would be pleased to lend any additional support as the strategy is developed. Should clarification be required regarding any of the issues raised, the OPG would be happy to make representatives available for further discussions.

Children and young people in the child protection system, or staying at a visitable site¹

The OPG supports the recognition within the proposed strategy of the significant housing needs of young people involved with the child protection and youth justice systems. It is critical that there are holistic and collaborative strategies spanning all service systems to improve access to housing and housing support for this cohort. Transition planning, post-care support, coupled with prioritisation of this cohort in the housing system, and support to maintain housing, are critical factors in ensuring that the housing needs of this cohort are met.

¹ Visitable sites for children and young people include residential facilities, detention centres, corrective services facilities and authorised mental health services where a child or young person is staying: *Public Guardian Act 2014* s.51.

Both the OPG community visitor, and child advocate programs aim to help children and young people to resolve issues and disputes, make complaints, question administrative decision-making processes by government agencies, and provide support for them in court and tribunal proceedings. Through the work of these programs, the OPG has observed that a key factor contributing to homelessness for children and young people is their involvement with the child protection and/or youth justice systems.

It is vital that children and young people at risk of homelessness are provided appropriate support to access and maintain stable housing. Children and young people in the child protection and youth justice systems are at risk of having lower literacy and comprehension skills than others in their age group, which makes it difficult for them to understand and navigate the housing and welfare systems.

Housing stability is a critical element of ensuring the wellbeing of children and young people. Without this basic security, children and young people are often unable to engage with other key services including health and education.

The strategy should include mechanisms for timely case planning to facilitate the child or young person's transition to independence, or release from detention to ensure that appropriate, safe and secure accommodation is secured *before* the child or young person is required to move. Currently, as there is a waitlist and stringent criteria to obtain public housing, any delays in the development or implementation of case planning increases the risk that the child or young person will become homeless in the interim.

For children and young people in the youth justice system, and also under a child protection order (dual order), the OPG has observed that there can be a lack of forward and proactive case planning to ensure that housing issues are finalised prior to their release. As children and young people cannot lawfully be held in detention centres beyond their release date, if a release date arrives and there is no fixed housing organised, the child or young person risks being released to a form of crisis accommodation which is inappropriate for their support needs.

While young people transitioning to independent living receive housing priority, they are often not equipped with the understanding, knowledge or skills, to maintain their accommodation arrangements. Lack of budgeting skills, access to services and understanding of Centrelink requirements are barriers to a young person's housing stability, as is isolation from their natural support network. Young people may also be excluded from housing assistance due to previous evictions and breaches of housing conditions.

To assist young people to maintain housing long term, the strategy should include the need for accommodation to be located in the vicinity of their support network, coupled with ongoing assistance by services such as health, education and employment.

Adults with impaired capacity

The Office of the Public Advocate has estimated that there are approximately 118,739 adults (1 in 40 people) in Queensland with impaired decision-making capacity, and that by 2026, this population is estimated to increase to approximately 151,566 adults (1 in 39 people).² Based on these estimates, people with impaired capacity represent approximately 2.5% of Queensland's population.³

² Office of the Public Advocate, Queensland, *The potential population for systems advocacy*, January 2016, p 2 accessed at http://www.justice.qld.gov.au/_data/assets/pdf_file/0006/457539/fs02-potential-population-v5.00.pdf

³ <http://www.qgso.qld.gov.au/products/reports/pop-growth-qld/qld-pop-counter.php>

As of 30 June 2016, the OPG had been appointed as guardian for approximately 2,330 persons with impaired capacity.

Home ownership is generally not a viable option for many OPG guardianship clients. These clients often lack access to affordable and appropriate long-term tenancies, whether through public housing or the private rental market. They also struggle to have appropriate support to navigate and understand mainstream financial services in order to manage and own their own property.

With home ownership out of the reach of most OPG guardianship clients, there are often few (if any) suitable residential options available to meet their accommodation needs. Guardianship clients often have high or complex needs. Some may be homeless; may have been released from custody or on bail; may be located in rural, remote or regional areas; or are elderly. These issues may be further compounded for clients with Aboriginal or Torres Strait Islander heritage, who face additional barriers of culture and connection to their land. In the experience of OPG, guardianship clients with significant, multiple and complex needs experience severe and persistent social exclusion from mainstream services and opportunities, including access to public housing. In addition, those clients who experience financial hardship, and do not have a support network or access to appropriate services, are also at high risk of becoming homeless.

The work of OPG guardians often involves expending considerable effort in advocating, negotiating and escalating issues with government funding bodies and non-government service providers to obtain suitable housing for our clients, as well as protecting the rights and interests of clients, including when they struggle to maintain their tenancy.

To ensure that this cohort receive appropriate assistance to meet their housing, or tenancy requirements and increase their life opportunities, the housing strategy should form part of an integrated, holistic, whole-of-government approach to service delivery. The OPG supports the strategy recognising that many people face multiple disadvantages and will require direct housing assistance and support to stay housed, some of which will include the provision of long term support through other services, such as mental health, disability services, or aged care.

The strategy should therefore expressly address the barriers that are specific to people with impaired capacity face, namely, impediments to home ownership; support needs to navigate the system to contact housing assistance, and find housing; finding and keeping long term hold of an appropriate tenancy of their choice to meet their specific needs; ensuring that housing is available across the state in each community, so that people with impaired capacity are not forced to live in communities away from their familial and social supports, and can have access to support services in the home, or in the community.

Housing support should be directly linked with other service system support to break the cycle of unstable and insecure tenancy

For this cohort, housing stress can be exacerbated by the absence of collaborative service delivery, such as mental health or disability services to assist people to maintain their tenancy. When a crisis occurs in the tenancy arising from a tenant's behaviour due to a mental illness, or intellectual or cognitive disability, there should be a responsive (rather than reactive) approach. This early response should be coordinated with other service systems to address behavioural problems. Early intervention would assist the tenant to gain access to services to support them to positively manage their behaviour and maintain their tenancy, and avoid a crisis situation where the tenant may have to be removed elsewhere, or be faced with the risk of homelessness.

Historically, there has been a lack of support for people with complex needs living in public housing. This has been a common experience for clients who have moderate mental health issues, but the severity of their illness has not met the criteria required to access requisite housing support services. This cohort often live at home independently, and lack informal support networks. Due to their mental illness they may exhibit behaviours which affect neighbours, such as making excessive noise, or face allegations of anti-social interactions.

In the experience of the OPG, the current approach to dealing with these tenancy issues may be to confront the behaviour (eg. excessive noise) at the point of crisis, rather than address the underlying cause (eg. an untreated mental health condition) through early intervention, when initial concerns are raised. In the experience of the OPG, the most significant examples regarding our clients have led to remedy breaches, disciplinary action and eviction notices. Some of these have been referred to the Queensland Civil and Administrative Tribunal (QCAT) for resolution, resulting in multiple departments becoming involved to intervene in order to prevent the person from becoming homeless. In some cases, DHPW has worked with the OPG, and support services, to relocate the client. While this may resolve the initial housing complaint, it never resolves the problem of the lack of support required to address the underlying behaviour that led to the problem in the first place. The client has then displayed anti-social behaviour at the new location, and the cycle goes on. While a pilot scheme is currently underway to link relevant agencies together to create referral pathways to assist this client group (Mental Health Demonstration Project), this is a critical issue that should be addressed within the strategy for persons with complex vulnerabilities, such as people with behavioural problems due to mental illness, or intellectual or cognitive disability.

Under current housing arrangements, a disabled person with complex needs and severe mental, cognitive or intellectual impairment is unlikely to be able to live independently, and on their own, in the community. The cost of the support package necessary to enable the person to live independently with fulltime care is invariably too costly for government. Therefore, due to the high support needs of these individuals, they continue to reside in group or residential supported accommodation settings. The OPG has also observed that the more complex the needs of the individual concerned, the less availability of choice of services, supports and accommodation.

The strategy also needs to take into consideration that substantial investment in alternative accommodation is required to ensure that these individuals with complex needs are given real choice in accommodation service provisions, and that this real choice is extended state-wide.

Tenancy breach procedures

It is critical that the proposed strategy expressly address the specific needs of people with impaired capacity who do not understand the tenancy agreement; the consequences of breaching tenancy rules; nor the processes to be navigated should a tenancy breach be initiated by DHPW.

A high proportion of OPG guardianship clients with intellectual or cognitive disabilities will:

- not understand the initial tenancy agreement, nor the process or procedures regarding a breach of the tenancy agreement
- lack the ability to understand breach letters, nor understand the consequences of not complying
- lack the ability to organise their lives, remember dates or appointments, or comply with other mandatory requirements
- have little or no literacy skills
- lack access to the appropriate intensive support service to navigate the tenancy system.

The OPG has ongoing concerns regarding the existing approach taken by DHPW to address anti-social behaviour of our clients. The standard processes used to resolve breaches in tenancies (including written notices of remedy breaches and letters outlining expectations of tenants) are generally not appropriate for tenants with impaired capacity, given the limitations outlined above.

In the experience of the OPG, clients with impaired capacity who have a guardian and administrator appointed, usually have little, if any, understanding of the tenancy agreement which usually signed by the administrator on behalf of the client. If the client breaks rules under the agreement, DHPW generally follows standard breach processes *regardless of who signed the agreement*, which then places the responsibility on the client to remedy the breach. If the client did not have an understanding of the agreement at commencement, they will not have an understanding of what is expected and are unable to remedy the issues by themselves. A critical issue that remains unaddressed, relates to the legality of who is responsible for resolving issues if the agreement was not signed directly by the client, but was signed on their behalf by a substitute decision-maker.

The OPG has also had situations where breach notices have been sent directly to our client rather than the guardian or administrator. The strategy should expressly address issues specific to people with impaired capacity regarding understanding tenancy agreements and compliance, and how these issues should be resolved. There should be clear communication pathways prioritised under the strategy, particularly between relevant agencies, and where guardians or administrators are appointed.

Case example

An OPG client received a remedy breach by letter, without the guardian or administrator knowing. The client is illiterate and was not able to read or understand the breach. As the client did not respond, this led to a strike notice and potential eviction. The OPG and the Public Trustee were eventually made aware of the issues, and a number of stakeholder meetings were held to resolve the issue. The client was relocated to a hostel before the eviction was complete, to ensure they could remain on the housing register if it was suitable in the future.

A strategy for affordable housing of choice

The OPG strongly supports the inclusion of strategies to address the lack of affordable private housing and rental options within Queensland.

Private housing

For the majority of OPG clients in the system, public housing is not perceived as a temporary solution or transitional option to lead to private housing; many of these clients, and their supports, are not pursuing private housing options for the reasons set out above. However, there are a small number of OPG clients who have entered the private rental market. These clients are generally high functioning, and have independently sought private rentals. The OPG is generally supportive of private rental options pursued by our clients, and provides decision-making support when consent to these arrangements is sought.

However, many clients may not have the capacity or motivation to independently seek private rental options. In addition, private accommodation is generally unaffordable for clients on disability or age pensions. In the experience of the OPG, where support services are involved, actions to assist the client to seek alternative housing are often not undertaken where the current housing is meeting their immediate needs. It is unlikely the support services would be funded for this purpose and therefore would not implement this into a support plan. The OPG supports a housing strategy that both builds the capacity of adults with impaired capacity to choose their own housing, and navigate the private housing sector, in order to transition to living in affordable private housing in the community.

Co-tenancy arrangements

In the OPG's experience, the most prevalent circumstances of violence, abuse and neglect result from the unsuitability of co-tenancy arrangements, and the inability of a person with impaired capacity to be removed from that situation due to lack of other accommodation options.

OPG Community visitors regularly come across issues where adults with impaired capacity are subject to verbal and physical abuse in their own homes from co-tenants. Due to a lack of funding and accommodation options, it can often be the case that these individuals are stuck in their residential situation as there are no other alternatives.

Further, these adults have little (if any) say as to whom they live with. There are *no other options*.

An effective housing strategy is dependent upon the allocation of sufficient financial resourcing for development of new housing. Further, innovative housing design should be prioritised, and increase the availability of suitable accommodation options for clients with complex needs. This would contribute towards people with impaired capacity having the real experience of knowing what it is to feel personally safe and secure in their own homes, removing the harsh choice between homelessness, or living with an abusive, or violent, co-tenant.

Access to safe and secure housing for adults in the criminal justice system

The strategy needs to recognise the complex issues faced by adults with impaired capacity, who have no supports in the community and need safe and secure accommodation to meet the requirements of the justice system.

Many of the OPG's guardianship clients require and interact with a myriad of service systems. While crisis often leads to a person entering detention within the criminal justice system, the pathway to detention is complex. It often occurs against a background of years of failed interactions between service systems. Inadequate identification, and provision of care and support needs early on in the person's life and into adulthood, coupled with a lack of collaboration and transition between service delivery systems are some of the factors that can lead a person finding themselves in detention. Many adults with impaired decision-making capacity who are failed by these service systems, can find themselves in contact with the criminal justice system and detained for petty crimes such as wilful damage, or creating a public nuisance.

A critical issue that OPG guardians often have to face is finding safe and secure accommodation for guardianship clients in order to meet bail conditions.

A condition of bail is that a person must have an address. OPG guardians frequently find themselves in a situation where they are unable to find safe and secure accommodation for their clients to meet the bail requirements, due to a lack of available and appropriate accommodation in the community. These clients are therefore kept on remand when they would otherwise be eligible for release. This issue also occurs with clients who are eligible for parole; however, in this situation, the client may be detained indefinitely beyond their release date until appropriate accommodation is secured.

Young people and aged care facilities

The OPG strongly supports the housing strategy addressing the specific needs of young adults with impaired capacity and high needs, who currently have no alternative other than living in aged care facilities.

Lack of appropriate housing is a significant barrier for people under 65 years with complex or high needs. The inability to find accommodation for clients with serious intellectual or cognitive disabilities and complex behavioural or health problems often means that residence in an aged care facility is the only available option for people aged less than 65 years. This may be the case regardless of whether it is appropriate to meet the person's disability and support needs, and if the person is young. Aged care facilities offer limited privacy, individual choice or decision-making (such as meal or bed times, or the ability to prepare one's own food). There is also the risk that a young person with disability may have a diminished social life through limited opportunities to develop relationships in the community with individuals of their own age. Further, the longer they stay in an aged care facility, the less likely and more costly it becomes to transition that person to supported living in the community.

It is critical that the strategy being developed provides, for both the funding and infrastructure to underpin the building of purpose-built community based accommodation to provide dedicated disability and support services for people under 65 years with complex and high support needs. The strategy should also include respite care housing. With significant investment in funding and developing alternative housing options, young people in aged care facilities may finally have choice and options of accommodation to suit their lifestyle and provide greater opportunity for participation in the community.

Over 65 year olds and residential care

The housing strategy should also consider the broader housing needs of older adults with impaired capacity, so that seniors can be supported to live independently, but in a safe and secure environment.

It is becoming increasingly difficult for the OPG guardians to secure good accommodation and support options for older people other than being placed in a nursing home.

In the experience of the OPG, placements in nursing homes may be driven by the hospital and Aged Care Assessment Team (ACAT) systems. In some cases, ACAT assessments are being conducted prior to the OPG's appointment or without the guardian's knowledge, with the outcome of the ACAT being that only residential care is recommended. This severely limits a guardian's ability to source alternate service and accommodation arrangements to allow the older person to remain in their own home, despite the Public Guardian's clear position that nursing home placement should only be considered as a last resort. The strategy needs to expressly address how Queensland will improve the affordability and accessibility of housing options to support seniors to live safe and independently.

Meeting specific needs according to region and culture

The OPG strongly supports a Queensland wide strategy to improve housing accessibility. This strategy should not only address issues specific to persons with vulnerabilities, but should also address these issues within the context of the unique issues facing these people in metropolitan, rural, and remote community areas. In particular, these should also address culturally appropriate accommodation for adults with impaired capacity with Aboriginal or Torres Strait Islander heritage, so that they can find supported housing within close proximity of their communities.

The most significant difference in housing across Queensland is the availability of housing in metropolitan areas compared with rural, regional and remote areas. When a person applies for housing, they can list a number of areas in order of preference. When an application for housing is made for an OPG client, DHPW will often contact the OPG to clarify preferences and suggest other areas where there are likely to be more options. In the Brisbane area, this is less of an issue because of the wide availability and proximity of housing and relevant services in neighbouring suburbs. For example, if a client is unable to secure housing in their location of choice, they may be able to travel relatively easily between suburbs to access preferred areas where there are services or supports. However, in regional areas, this is more challenging, and in remote areas there are often no options, other than re-location to an alternative community.

Case example

An OPG client wanted to reside in Bundaberg where his family and friends are located, but the only available housing options were in Hervey Bay at the relevant time. DHPW suggested the OPG include Hervey Bay in the client's preference list, but this would not have been suitable for the client.

The more remote the area, the less options there are. This forces the client to relocate a long distance if they want to access public housing and other relevant supports. Therefore, many clients who are eligible for public housing do not access this service because it is more important to them to remain near their support network. This is especially important to some Aboriginal and Torres Strait Islander clients who have a strong connection to their community, and are unable to obtain housing near their traditional lands or cultural sites.

In addition, public housing is often located in pockets or streets that are owned by DHPW, which can be stigmatising or isolating for clients. Consequently, to achieve optimal outcomes for both the client and the community, housing needs to be integrated and inclusive within existing communities, with relevant services and support networks located in reasonably close proximity.