

Inquiry into the provision and regulation of supported accommodation in Queensland

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Mr Adrian Tantari MP
Acting Chair
Community Support and Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Via email: CSSC@parliament.qld.gov.au

Dear Mr Tantari

Thank you for the opportunity to provide a submission to the Inquiry into the Provision and Regulation of Supported Accommodation in Queensland. This submission is provided to complement the information I provided to the Community Support and Services Committee (the Committee) at the public hearing on 13 December 2023.

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity, and children and young people in the child protection system or staying at visitable sites.

Relevant to this inquiry, OPG promotes and protects the rights of adults with impaired decision-making capacity for a matter through the following functions:

- The guardianship function undertakes structured (supported and substitute) decision-making in relation to personal matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigations function investigates allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.
- The community visiting function independently oversights visitable sites (authorised mental health services, the Forensic Disability Service, places where specified NDIS participants reside, residential services with level 3 accreditation, and other places prescribed by regulation), to inquire into the appropriateness of the site and facilitate the identification and escalation of complaints for resolution by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, OPG will support the person to express their views and wishes, participate and make decisions where possible.

The *Public Guardian Act 2014* and the *Guardianship and Administration Act 2000* provide for 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 advance health directive or an enduring power of attorney.

In 2022-23, OPG community visitors made 129 visits to 68 level 3 residential services. From the period 1 January to 22 November 2023, community visitors raised 155 issues on behalf of adults living at level 3 residential services. These issues related to the following categories, with examples:

- wellbeing (34 issues) – access to leisure, recreation and community access, family support, staffing issues, personal clothing and effects, and respect for privacy.
- accommodation (33 issues) – fire safety, quality of the accommodation, tenancy agreements, and storage of food.
- support (33 issues) – access to funds to cover costs of living and personal essentials, access to formal and informal decision makers and advocates, personal care and hygiene, and individual support plans.
- health (15 issues) – administration and storage of medication, availability of medical history, monitoring of health care needs, staff training, and first aid procedures.
- least restrictive services (14 issues) – unauthorised use of restrictive practices, compliance with positive behaviour support plans, and documentation and management of finances.
- assessment (13 issues) – access to assessments by specialists, assessment of capacity, professional behavioural assessment, aids and equipment, and risk assessments.
- treatment (11 issues) – medication and treatment plans, access to psychologists and social workers, and monitoring of these plans.
- accessibility (2 issues) – access and awareness of support available to lodge complaints.

Community visitors have also observed incidents of support and services that fall below the standards expected of residential service providers under the *Residential Services (Accreditation) Act 2002* (RSAA), particularly in situations where service providers have a strong influence over an adult's day-to-day life and the adult does not have a support network to advocate on their behalf. Adults may have limited choice about the accommodation and support services provided at level 3 residential services because all services can be provided in-house by the residential service provider, including NDIS supports and medical treatment.

The Public Guardian is currently appointed for decision making for approximately 130 adults living in level 3 residential services, which represents about 3.5% of OPG's guardianship clients. OPG generally only supports decisions for people to reside in level 3 residential services when there are no other accommodation options available, or where the person is very clear in their wishes to reside at a specific level 3 support accommodation service. Guardians have noted issues with level 3 residential services around residents' lack of privacy, very small rooms and personal space, conflict with other residents, and high residential costs.

In their briefing to the Committee on 27 November 2023, the now Department of Housing, Local Government, Planning and Public Works (DHLGPPW) advised that the government is committed to reviewing the RSAA and will consider observations of the Public Advocate, the findings of this inquiry, the NDIS Review and the Disability Royal Commission. The department noted that the review of the RSAA would provide an opportunity to ensure that the resident voice and lived experience is placed firmly front and centre of the review. OPG recommends the review be further reframed to place residents' rights at the forefront, consistent with the United Nations Convention on the Rights of Persons with Disabilities, and encompass minimum service and accommodation standards as proposed in recommendation 7.38 of the Disability Royal Commission.

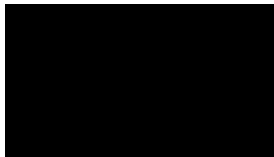
It is also critical that DHLGPPW is a sufficiently resourced regulator with strong monitoring and compliance powers to proactively monitor level 3 residential services, thereby avoiding the need for corrective action after a resident has experienced poor standards of care. A robust regulator with visibility into providers and their services ensures that standards are consistently implemented and can foster a culture of enhanced compliance. It ensures oversight agencies, that often only become aware of a problem after it has occurred, are not required fill the safeguarding gaps of the primary regulator and can focus on advocating and promoting service improvements on behalf of individual residents.

To address the lack of choice of service providers operating within level 3 residential services discussed above, the RSAA could be amended to include a similar requirement to section 28 of the *Disability Services Act 2006*, which provides that '*services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of the life of a person with disability*'.

While Queensland continues to experience a significant shortage of affordable housing, level 3 residential services play an important role in providing an accommodation option for both NDIS and non-NDIS participants with disability who receive daily living supports at their place of residence. This inquiry provides an ideal opportunity to address the issues experienced by residents at level 3 residential services and to reform the model in line with relevant recommendations of the Disability Royal Commission, to provide accessible, secure, appropriate and safe accommodation for people with disability.

I trust this information is of assistance. Should you require further information, please contact Ms Kelly Unsworth, Principal Policy Officer, at policy@publicguardian.qld.gov.au or on [REDACTED].

Yours sincerely

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Shayna Smith
Public Guardian