

Ombudsman finds families not required to be told about death of loved ones under public guardian's care

By [Rebecca Turner](#)

Posted Thu 8 Jul 2021 at 5:28pm, updated Thu 8 Jul 2021 at 6:07pm

The people given powers to make life-and-death decisions for some of WA's most vulnerable people was never required to inform families their loved ones were dying or even dead, according to a report by the WA Ombudsman.

The report tabled in the WA Parliament on Thursday details how three elderly people — Joyce Savage, Robert Ayling and Kenneth Hartley — died while in the care of public guardians without their family's knowledge for as long as nine days.

"Each led a long life, was a family member and a contributor to their communities," WA Ombudsman Chris Field wrote.

"Any delay in notifying a family of the death of a family member will, of course, be upsetting for a family.

"Further, the delay does not give the dignity to the person's passing that they should, and must, be afforded."

Ms Savage was an 89-year-old former nurse and great-grandmother who lived at the Acacia Living Group's Menora Gardens.

The Office of the Public Advocate (OPA) had been appointed as her guardian to make decisions relating to her accommodation and health treatment, among other things.

The OPA is the guardian for about 2,600 vulnerable Western Australians who have "no other person who is suitable or willing to act", and is appointed by the State Administrative Tribunal.

Daughter told of mother's death by third party

Ms Savage died in hospital on Valentine's Day this year, after receiving palliative care authorised by the guardian.

Key points:

- A probe found three families were not told of their relatives' deaths
- The Office of the Public Advocate was not required to inform family members
- The ombudsman has recommended this policy be changed

"The decision was that Ms Savage was to be treated as 'not for resuscitation', 'not for intubation' and 'not for intensive care', but to be treated for comfort care," the report said.

The OPA was told of her death that morning but her daughter Kaye Davis did not learn until February 22 — and not from the OPA.

The report said the guardian had tried to call Ms Davis to discuss the palliative care but had the wrong number and then tried the aged care facility, which did not answer.

The guardian also learned the hospital had Ms Davis's number, which was also incorrect, but did not ask for it.

War veteran's son learns of dad's death four days after passing

Mr Ayling was an 89-year-old World War II naval veteran and grandfather who lived at Bethanie Peel Lodge aged care hostel.

The OPA had powers to make decisions about his accommodation and health treatment, and was notified of his death in hospital on October 4, 2014.

But his son, also called Robert Ayling, did not learn of his death until October 8 — and like Ms Savage was not told by the OPA.

Similarly to Ms Savage, Mr Ayling's guardian also approved palliative care without notifying the family and letting them know of the potential death of their relative.

Mr Hartley was an 80-year-old former supply manager who lived at Hamersley Aged Care Home.

He died there on New Year's Eve 2020, after being unwell since November and being admitted to hospital twice.

But his brother was not told of his death until January 5.

The OPA did not contact him although it had notified the Public Trustee and State Administrative Tribunal the day before.

In the case of all three elderly people, Mr Field found their families were not notified because the OPA did not believe it was its lawful role to do so.

But, as Mr Field pointed out, "contacting family to notify them of the death of a represented person is not an action for which OPA needs statutory authority".

"It is also unlikely that OPA's practice that it does not notify family of the death of a represented person is consistent with community expectations about how OPA should undertake its role," the report said.

Mr Field found the guardians had done nothing wrong in not notifying the families about the deaths or palliative care decisions because they had followed the guidelines they were given, but these OPA guidelines were "wrong".

He said the OPA should apologise to the families, advice which was taken by public advocate Pauline Bagdonavicius on Thursday.

"Now that the ombudsman's work has concluded, I will be contacting the families to personally apologise and offer my condolences, and to provide them with an opportunity to discuss the matter further on their terms if they wish," she said.

Ms Bagdonavicius said she accepted Mr Field's seven recommendations, including ensuring families were notified of deaths.

The OPA had already made some changes during the investigation, including to its guidelines to ensure that families were told of deaths and palliative care decisions.

While commending the agency for introducing the new guidelines, the ombudsman was critical of new rules that said guardians should make three attempts to contact a family member.

He said it "would not have resulted in OPA notifying Ms Davis of the death of Mrs Savage".

"If the new practice standard would not have remedied the very reason why the practice standard is being introduced in the first place it is, in my opinion, wrong," he said.