

7NEWS



Silenced by the state

Across Australia, more than 46,000 clients under state control are prevented by law from being identified, but there are growing calls for change. Some say gag laws that were designed to protect vulnerable people are shielding the agencies involved from scrutiny.

By [Anne Connolly](#) and Hannah Meagher

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Uli Cartwright spent five years filming a documentary about his life and struggles with disabilities. He hoped it would inspire others.

Instead, it had to be taken off the internet because he had identified himself as a former client of Victoria's State Trustees.

Uli had no idea that it was a criminal offence to out himself, just as it is for more than 46,000 people around the country who have their finances controlled by the state because they're deemed to lack capacity due to dementia, mental illness, brain injuries and intellectual disabilities.

From the time Uli was born, he has been unable to eat or drink due to a chronic lung condition and receives all his nutrition via a tube inserted in his stomach.

He also has an intellectual disability.

His unique experience led him to invite a filmmaker to document his life.



Part of the documentary included details of his time under State Trustees which started in 2015 when a support worker from his group home applied to Victoria's Civil and Administrative Tribunal.

"I wasn't paying my bills on time ... and the group home that I was in thought that it would be easier to control me by putting me under a financial administration order with the Trustees," he says.

The film included a scene showing Uli later going to the Victorian tribunal and winning the right to regain control of his finances by having State Trustees removed.

Uli's film, [Life is a Battlefield](#) premiered on SBS on the International Day of People with Disabilities in 2021 but within weeks it was taken off its streaming service after the tribunal contacted the broadcaster citing restrictions on identifying people under State Trustees.



“I was angry. I was annoyed – very annoyed,” Uli remembers.

“The movie is not about State Trustees, it’s about my life.

“I was ... very adamant to get this movie back online. Not for myself but first and foremost, for people with disability.”

With the help of a lawyer, Uli took action to have his gag orders lifted by the Victorian tribunal, meaning the film could go back online and the ABC is legally able to identify him.

Since then, Uli has been campaigning to repeal the confidentiality orders which exist throughout Australia, except the ACT.



“This whole thing about protecting the most vulnerable in Australia to walk alongside and have the same rights as you — how are they going to do that, if I can’t speak about it,” he says.

The law is so strict in most jurisdictions that it’s illegal to identify someone even if their order has been revoked or they have died. Family members can’t speak out either.

Penalties range from thousands of dollars in fines to jail sentences.

The confidentiality laws which were designed to protect the vulnerable are increasingly being seen as gagging those who want to speak out about their poor treatment.

Now there’s a growing movement to change the laws and allow people under Public Guardians and Trustees to tell their stories.

Greens senator Jordon Steele-John is among those pushing for the gag laws to be reformed across the country.

“These systems and processes are actually in flagrant breach of our responsibilities as a nation and the United Nations convention on the rights of disabled people. So, there is an urgent need for change here,” the senator says.



ABC Investigations has been reporting on the Public Guardian and Public Trustee for more than a year.

During that time, we’ve received hundreds of emails from families complaining about Public Guardians which have put their loved ones into aged care and group homes against their will.

Others have written about financial mismanagement and high fees charged by Public Trustees which leave them with little money to live on.

For this two-part investigation for 7.30, we went to Queensland's Civil and Administrative Tribunal and made a legal application to identify two people who had been under that state's Public Trustee.

We argued that it was a matter of human rights and a matter of public interest, and the tribunal agreed, giving us the right to identify them and tell their stories.

'I didn't know that they were going to destroy my life'

Fran McCarthy was a career public servant when in 2010, after losing her job, she had a devastating mental breakdown.

She owned a house in Agnes Water, a picturesque spot on the edge of the Barrier Reef, but was in debt.

Despite her depression, she had worked out a plan to dip into her super under hardship provisions to pay her mortgage.



A mental health nurse advised her to go to Queensland's Civil and Administrative Tribunal to have the Public Trustee appointed to help her with the necessary paperwork.

"It's pretty daunting when you're in this massive depressive state to sit down and fill out a 20-page application so I just thought, great, I won't have to worry.

"I didn't know that they were going to destroy my life."

Instead of saving her home, Queensland's Public Trustee sold it against her wishes for \$195,000.

The property is estimated to be worth around \$500,000 today.

Fran McCarthy looks toward her former property at Agnes Water, Queensland. *ABC News: Mark Leonardi*

The sale sent Fran spiralling even further into depression, which she says meant she couldn't get another job.

Fran soon discovered she had huge fees to pay the Public Trustee.

Over most of her 10 years with the government agency, it charged fees of up to \$120 a week — a quarter of her pension. Fran received just \$100 a week as a living allowance.

“They were happy to charge me the fees and charges, but they weren't going to give me any money at all like for clothes, for shoes, for underwear,” she says.

An email from the Public Trustee shows Fran was refused \$100 for Christmas because her account was in arrears after she travelled to her aunt's funeral earlier that year.



The fees pushed Fran into so much debt that the Public Trustee cashed in some of her super to pay itself more than \$27,000.

When Fran initially appeared at the Queensland tribunal, the Public Trustee representative said her fees would be \$8 a month.

Instead, Fran was paying 60 times that amount, totalling almost \$500 a month.

Do you have a story to share about the Public Trustee system?

Email us at trustee@abc.net.au or for [confidential tips visit here](#).

Fran complained to the Public Trustee's then CEO Peter Carne who told her an "independent review" could find no record of her claim that she had been promised fees of \$8 a month.

Fran escalated her complaint to Queensland's Ombudsman, but it didn't investigate further, saying the Public Trustee had not "acted contrary to law, unreasonably or wrongly".

When Fran later learned she could order a transcript from the tribunal hearing, she quickly discovered she was right, with fees promised to be "about \$8 a month or so at the very most".

The Public Trustee apologised, saying "it is regrettable that we did not obtain a copy of the transcript" and that although it was "entitled to charge the fees", it would refund the money as a "gesture of goodwill".

Fran received a refund of more than \$48,000.



She now lives in a tiny village outside Bundaberg in a modular house she bought second-hand on Facebook for \$15,000.

She says the Public Trustee mismanaged her finances so badly it's all she can afford. She had the orders revoked in 2019 and is now suing the Public Trustee for financial damages.

"They're not protecting anybody. They're protecting themselves and their income," she says.

"They have no feelings, they're not a community service, they're a money-making machine."

Queensland's Public Trustee declined an interview and the office would not answer any of our questions about the sale of Fran's house, her high fees and the withdrawal of money from her super fund to pay itself because it was "bound by confidentiality and privacy obligations".

The office issued a statement saying "we provide an essential service ... for people who are not in a position to manage their own financial interests" and "our aim at the Queensland Public Trustee is to enhance and protect the human rights and dignity of all Queenslanders".

'A massive human rights issue'

Public Trustees are government agencies which receive virtually no financial assistance and fund themselves by charging their vulnerable clients fees and commissions.

Last year, they charged people with cognitive disabilities around \$300 million in fees and commissions with Queensland's Public Trustee charging the most — almost \$93 million in fees.

It used almost \$37 million of that to fund its other business of providing free wills to all Queenslanders.

Prisoner of the state



When Dan started suffering from memory loss and anxiety, it kicked off a chain of events that left him living in a nursing home against his will with little say over his future.

That arrangement was condemned by Queensland's former Public Advocate Mary Burgess in a 2021 report which also found that the Trustee's "commitment to self-funding and sustainability has been achieved at the expense" of people in its care.

The spiritual head of Queensland's Uniting Church, Reverend Andrew Gunton, responded to that report by calling on the Government to fund the Public Trustee instead of charging fees.

He also wants the gag laws abolished to allow clients of the Public Trustee to speak out.

"I think this is a massive human rights issue," he says.



“They can’t speak out against the Public Trustee if they feel there’s been some irregularities or even an injustice in accessing their money. And they sometimes simply don’t know why fees and charges have been charged but find that they can’t get answers because the Public Trustee really doesn’t have to have any kind of public accountability.”

Auditors-general in New South Wales and Western Australia have also criticised their Trustees’ funding arrangements.

NSW’s auditor-general called its system “inequitable”, finding there was “a risk that some fee-paying clients are unknowingly subsidising others” while her WA counterpart described the Trustee’s “incentive to maximise fees” as “not appropriate”.

After an investigation by the ABC into its practices, WA’s attorney-general John Quigley announced the Public Trustee would be restructured to stop the system where clients with assets subsidise those who cannot afford to pay.

‘It was part of me that I’d felt they’d thrown away’

Peter Hansen needs crutches to get around but otherwise the 86-year-old is capable of living relatively independently, with his flatmate Bahram giving assistance where necessary.

It’s a far cry from where he was three and a half years ago, locked up in a nursing home against his will by order of Queensland’s Public Guardian.



His ordeal started in 2019, when he flew back early from a holiday in the Philippines after developing infections in his legs.

He was admitted to a Brisbane hospital where, while sick and prescribed opioids for his leg pain, a geriatrician did a capacity test.

Peter failed the assessment, leading the geriatrician to diagnose him with “mild vascular dementia”.

People with dementia and other cognitive disabilities can still have capacity to make decisions as long as they understand what’s being asked, how it affects them and can communicate it.

Peter had been running a commercial carpet cleaning business before he went to the Philippines and had not been diagnosed with dementia before.

Peter cut short a holiday in the Philippines to return to Australia for medical treatment. *Supplied*

“They said that I’ve lost my memory. As far as I was concerned, I had a clear mind and knew what was happening,” he says.

“I thought that I was quite capable of going back to my own house and looking after myself.”

The hospital applied to Queensland’s Civil and Administrative Tribunal, saying Peter’s lack of capacity meant he may be at risk of financial exploitation and gave evidence that he had been giving money away – claims Peter denied.

The tribunal appointed the Public Trustee and Public Guardian which decided he needed to go to an aged care facility.

Peter says he was transferred straight from hospital to a nursing home with only the clothes he had packed for his holiday.

He says he was kept in the facility against his will and charged around \$5,000 a month.



The Public Trustee gave him a living allowance of \$20 a week.

“You have no freedom there. The front and the back doors are locked. There’s no exercise,” he says.

Peter’s friend Jock Smith had no idea why his friend hadn’t returned from holiday. When he found out about the hospital’s actions, he was shocked.

“They knew the medication he was on and still came to that decision (that he didn’t have capacity),” he says.



“Peter’s got a very active mind, and he was sat in front of a TV and told don’t move. That’s prison. That’s incarceration.”

The Public Trustee put Peter’s house up for sale in order to pay his aged care fees and the accommodation deposit.

With the help of friends and a lawyer, the sale was stopped but it was too late to stop his entire house being emptied of all his possessions.



The Public Trustee took more than \$5,000 from Peter's account to clear his house, with most of it going to a rubbish removal company. Some contents were sold while the rest went to the tip.

Peter received \$733. The Public Trustee charged him almost \$500 for an inventory of his contents but he says he never found out any details of what items had fetched at auction.

“Things that I'd had virtually all of my life – it was part of me that I'd felt they'd thrown away. I was very upset about it,” he says.

A neighbour was able to salvage a few of Peter's photo albums — everything else was sold or thrown away. *ABC News: Mark Leonardi*

A neighbour managed to save a few photo albums, but Peter lost everything else.

Friends and a charity helped him refurnish his house.

In 2020, 18 months after Peter's first capacity test, a different geriatrician assessed him and found he had capacity to make decisions about his finances, health and accommodation despite a "mild cognitive impairment or a mild dementia".

"I think the public trustees are just trying to take control of old people and take their estate for funding. They're not interested in the wellbeing of people at all... it is a financial gain they're after," he said.



Peter is taking legal action for false imprisonment and financial losses.

The Public Guardian and Public Trustee said they could not answer any questions about Peter's case due to the confidentiality laws, even though the ABC won the right to identify him and tell his story.

Change in the wind

In March last year, Four Corners went to the Supreme Court and won the right to identify three other clients under Queensland's Public Trustee, revealing financial mismanagement and exorbitant fees.

The Queensland Government announced two inquiries after the report but, more than a year on, there's been no news about their status.

Chris is one of the few people to escape the Public Trustee system. The ordeal cost him \$1 million



A Four Corners investigation reveals how people are virtually abducted and silenced under a system designed to protect Australia's vulnerable.

Attorney-General Yvette D'Ath was reappointed to the portfolio last month and said she would receive the review into fees and charges “later this year”. She is also considering a report by Queensland’s Public Advocate John Chesterman which recommends the gag laws be lifted just as it was for victims of sexual assault who were previously prevented from being identified.

There’s movement around the country, with Tasmania being the first state to reform its gag laws, with legislation expected to be passed next month.

In Victoria, the government is also reviewing its laws after calls from Victoria’s Public Advocate Colleen Pearce who said it should change legislation as a matter of human rights.



In NSW, the Government has also committed to a review of its laws and said it would “take into account any recommendations from the Disability Royal Commission”. The royal commission is due to deliver its recommendations to the federal government in September.

The Northern Territory and South Australian Trustees said they would not prosecute anyone who spoke out about their own conditions under guardianship and administration with South Australia’s Attorney-General’s department considering changing the law to make that clear and allow the “important, necessary role that public interest journalism plays in holding authorities to account”.

The fight to lift the veil of secrecy surrounding public trustees *Anne Connolly*

Watch the second part of this investigation tonight on 7.30 on ABC TV and [iview](#).

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