

Office of the  
Public Advocate

# Annual Report

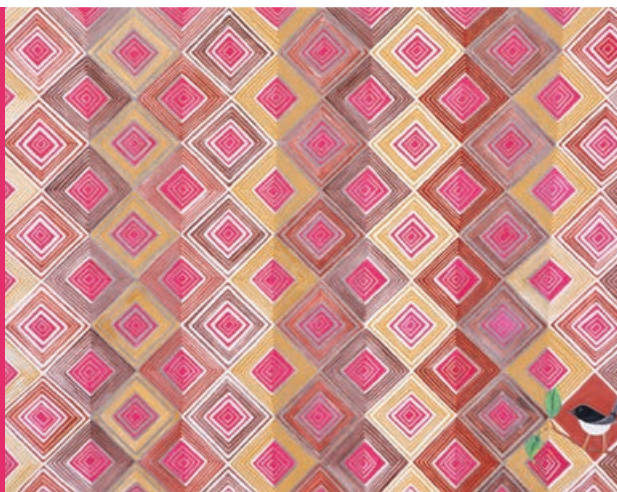
2019



Office of the Public Advocate

Safeguarding the rights and  
interests of people with disability





### **Cover image**

*Yaruk Healing Ceremony* by Stacey

### **Artist's statement**

I am a grandchild of the Stolen Generation.

My grandfather and his siblings were removed under government policies. As a result, our traditional culture was not passed down to me.

In 2013, I began working at the Koorie Heritage Trust. An Elder from the Cultural Heritage Council told me that I am Taungurong/Boon Wurrung.

My inspiration is the beautiful designs and patterns from traditional artefacts of my ancestors. Painting diamonds is healing for me. And now I can pass that healing onto my children and future grandchildren.

The artwork was purchased by OPA and used with permission under a licensing agreement organised by The Torch, a not-for-profit organisation that transfers 100 per cent of the sale price and licence fees to the artist.

### **About the case studies**

All names and some identifying features have been changed in the case studies used throughout this report to protect the privacy of the individuals involved.

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# Our Values

## Respect

We treat all people with respect. We value difference and individual worth.

## Inclusiveness

We seek to empower people with disability to contribute and participate in society.

## Integrity

We act honestly and transparently, and take responsibility for our actions.

## Independence

We promote the rights of people with disability and act independently of other interests.

## Compassion

We care about the individual and their circumstances. We recognise and respond to the particular difficulties faced by people with disability.

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The Victorian Public Advocate  
is empowered by law to  
promote and safeguard the  
rights and interests of people  
with disability.



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# Contents

**2019 at a glance** ..... p9

**Decision-making** .....p11

- Guardianship
- Investigations
- Medical decisions

**Advocacy** ..... p31

- Individual
- Systemic

**Safeguarding** ..... p41

- In care
- In police stations
- In prison

**Engagement** .....p53

- Advising, informing and educating
- Communicating
- Diverse groups
- Feedback and complaints
- Forums

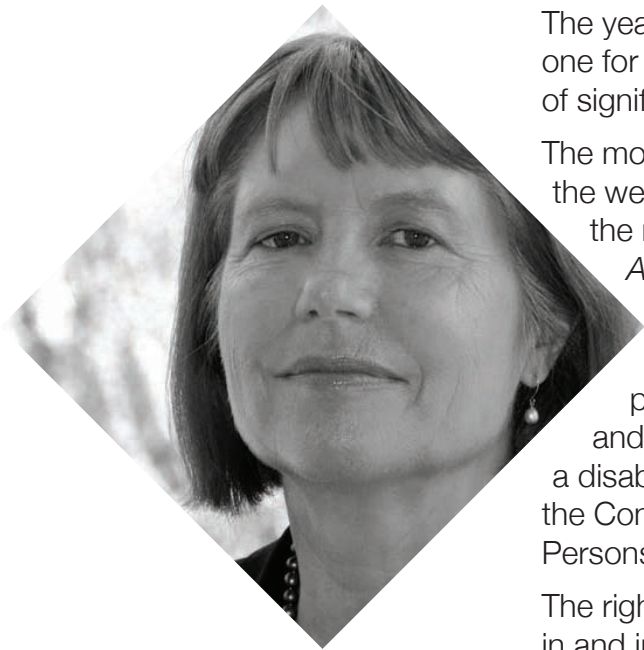
**Appendices** ..... p65

- Workforce data
- Financial report
- Compliance and accountability
- External and internal committees

**Public Advocate Awards** .....p69



# Message from the Public Advocate



The year has been a landmark one for my office with a number of significant developments.

The most fundamental was the welcomed passage of the new *Guardianship and Administration Act 2019*.

A primary object of the Act is to protect and promote the human rights and dignity of persons with a disability by having regard to the Convention on the Rights of Persons with Disabilities.

The right to make, participate in and implement decisions that affect their lives, and to be provided with support to do so, is one of the most important human rights for the people OPA works with, people with disability.

Under the new legislation, VCAT may appoint a supportive guardian or administrator. If there is no less-restrictive option available, VCAT may still appoint a guardian, but the guardian must ensure that the person's will and preferences are followed, unless it would cause significant harm to the person.

The new Act retains the Public Advocate as an independent statutory office charged with promoting the human rights of persons with a disability

and provides a new clear statement of functions and powers, including protecting persons with disability from abuse, neglect and exploitation, and undertaking advocacy for persons with a disability on a systemic or individual basis, among others.

OPA has long advocated for a human rights approach to guardianship and for many of the reforms in the new legislation.

The office is now working towards implementation of the new laws.

Another significant development during the year was the extent, to which it became apparent, that the NDIS is now an intrinsic part and parcel of all the work across the office.

The scheme has the potential to empower and transform the lives of people with disability, their families and carers by putting the person's needs for the good life at the centre of funding. In many cases, the NDIS is delivering real benefits.

However, it is apparent that OPA clients with complex and challenging support needs are simply not seeing the benefits that the scheme was intended to deliver.

Many people with complex support needs are failing to realise the benefits from their NDIS plans because they lack stable and suitable accommodation.

Time and again, the office has seen that delayed entry to the NDIS, inadequate planning and difficulties finding suitable service providers and accommodation, lead to many serious and harmful consequences.

Key among them are homelessness, incarceration in the criminal justice system and inappropriate, protracted placements in mental health services and hospitals. Once in those situations, it becomes much harder for the person to get out, further compounding the trauma they have already experienced in their lives.

Considering this, OPA's research report released during the year, *The Illusion of 'Choice and Control'*, recommended:

"All services which interact with people with disability, including all places of detention such as prisons and mental health services, should adopt protocols to identify whether people entering their service are NDIS participants or potentially eligible to be so, and to facilitate access requests at the earliest opportunity."

For those in the criminal justice system, there is entrenched confusion at critical points in the scheme as to when a person can access and receive funding for supports, including to build a durable pathway out of custody or to avoid custody.

In operation, there is seemingly no 'standard' way for people with disability in remand or custody to access NDIS supports.

Enough is known about Australian prisons to know that they are rarely the best way of dealing with crimes by people with disabilities, providing deterrence against future offences and equipping people to re-enter their community as contributing members of society.

However, it is also understood that prisons will remain a feature of our society and that, within

them, there are more effective and humane ways of treating people with disabilities.

OPA is also concerned about the criminalisation of people with disability through the use of intervention orders in circumstances where a person with a cognitive impairment may not understand or be able to comply with the conditions. As a result, people with disability may be charged for breaching an order, and potentially remanded into custody.

Thirdly, abuse and violence, sadly, continue to be a feature for the lives of many of the people OPA represents.

Staff prepare formal 'notifications' to me about serious issues they come across in the course of their work including cases of serious abuse and violence affecting their clients. These include physical, sexual, psychological, emotional and financial abuse and violence.

This year, there were 59 such notifications, thus showing, yet again, that, as a society, we still have a long way to go to address the causes of abuse and violence against vulnerable Victorians.

OPA continues this work through its advocacy, both individual and systemic, as well as through its volunteer programs, a fourth and highly significant component of its work.

Under the office's new *Strategy Plan 2019-2022*, the value of OPA volunteers is now being equally recognised with paid staff.

OPA Volunteers now comprise more than 700 dedicated Victorians across the state where the rights of people with disability and mental illness are most at risk: group homes, mental health units, supported accommodation, in providing police statements and interviews, and in prisons.

The first Public Advocate, Ben Bodna, instituted the powerful mechanisms whereby volunteers could legitimately extend the work of the office and, over 30 years later, they are still doing just that. Their remit has also been extended.

Some of the impressive statistics from their work this year tell the story the best.

- 435 Community Visitors made 1466 unannounced visits to mental health units, group homes and supported accommodation. Their separate annual report will outline the number of issues they found and how many were able to be resolved due to their tenacity and commitment.
- 193 Independent Third Persons (ITPs) attended a total of 3222 interviews supporting alleged offenders, witnesses and victims with a cognitive impairment or mental illness. This volunteer cohort can be called at any hour of the day or night and are available to Victoria Police across the state.
- drawn from experienced ITPs, are Corrections Independent Support Officers (CISOs) who attend Governor Disciplinary Hearings in 13 of the state's prisons. This year they attended 299 hearings, assisting 164 clients.

These services are provided by Victorians, many of whom have retired from professional work, and, yet, they are prepared to give their precious latter years to invaluable unpaid services for those less fortunate.

Without them, the reach of the vital work of the office would be much shorter, its outcomes less impressive and the lives of the state's most vulnerable a great deal poorer.

I applaud them yet again and, on behalf of the Government of Victoria, I thank them sincerely.

Finally, OPA staff - guardians, volunteer program staff, communications and corporate services operatives, advisers, investigators, administration staff, lawyers, and researchers - all give much more to their duties than merely their time and expertise. They bring substantial personal commitment to improving the lives of thousands of the most vulnerable Victorians.

I see this commitment acted out every day and I thank them, too, for their services.

Together, staff and volunteers alike, are proudly the Office of the Public Advocate.



Colleen Pearce  
**Public Advocate**



# 2019 at a glance

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**404**

investigations

**1823**

people under guardianship  
of the Public Advocate

**3222**

police interviews attended

**455**

applications for a medical  
treatment decision

**978**

new guardianship matters

**299**

Governor's Disciplinary  
hearings attended in adult  
prisons

---

**258**

individual advocacy  
matters

Systemic advocacy  
through

**31**

external advisory  
committees

**164**

prisoners with an  
intellectual disability  
supported

**193**

Independent Third Person  
volunteers

---

**700+**

OPA Volunteers

**170%** ↑

in ITP IVO breach interviews

**95**

print and online publications

**5524**

visits

**13,344**

instances of advice provided  
by Advice Service

**198,745**

publications distributed

---

**167**

community education  
sessions presented to

**4600** people

**285,872**

website visits

**91,361**

documents downloaded

**28**

media releases

**154**

instances of feedback

# Decision-making

## Guardianship

Guardianship is the appointment of a person (a 'guardian') to make decisions for an adult with a disability (the 'represented person') when they are unable to do so.

The Public Advocate is appointed by VCAT under the *Guardianship and Administration Act 1986* as the guardian of last resort when there is no other party either able or willing to act.

The office is required to accept all matters where it is appointed as guardian by VCAT and guardianship continues to be the largest single component of the work of the Advocate Guardian Program.

### New guardianship matters

This year, 978 Victorians with decision-making disability were allocated a state guardian by VCAT, the highest number ever.

With the carryover of existing matters not finalised last year, there were 1823 matters where OPA acted as guardian – also the highest on record.

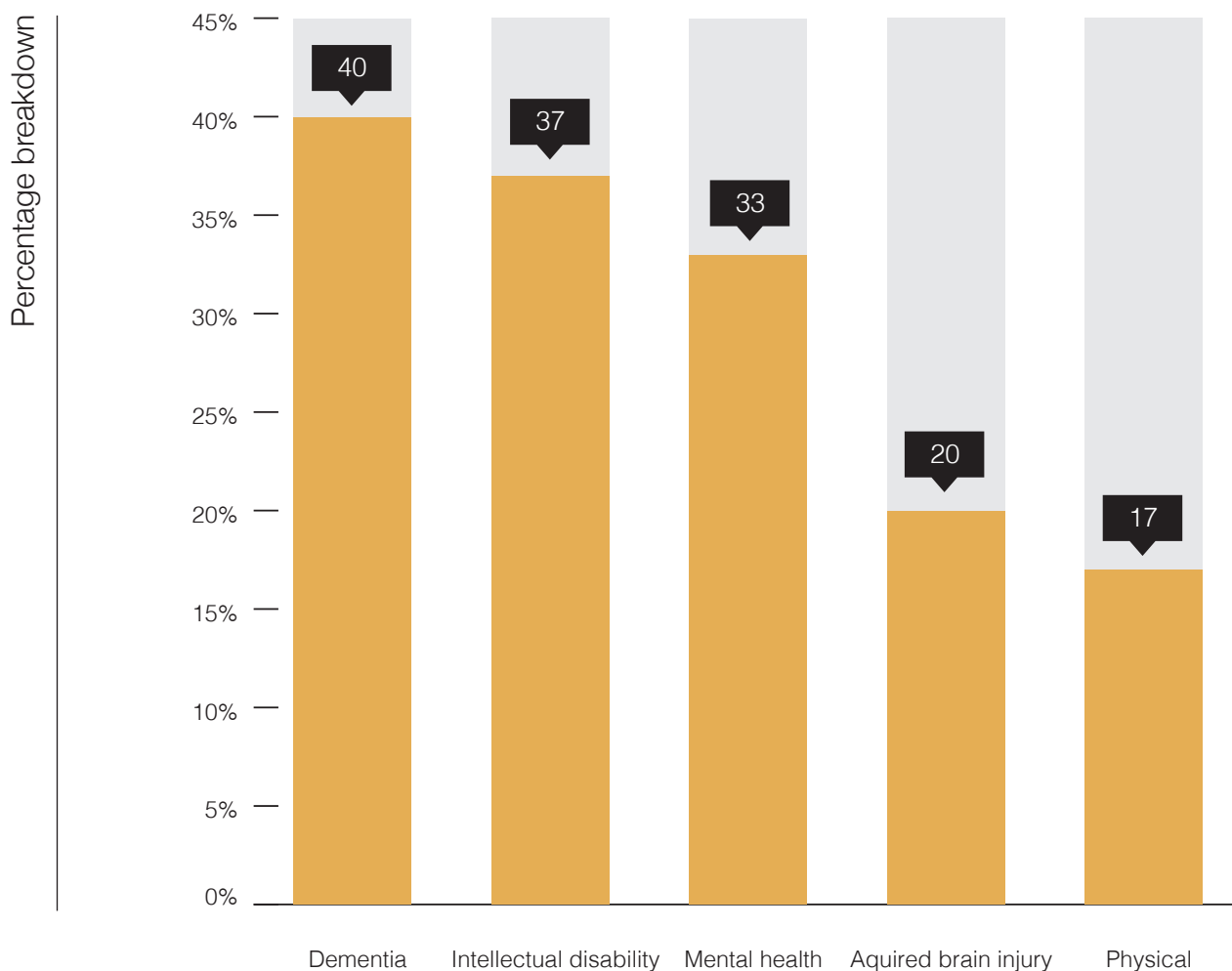
**Table 1. All guardianship matters, 18/19**

Community Guardianship	Guardianship	Temporary Guardianship	Total
25	933	20	978

Over the last two years, there has been an increase in the proportion of people with an intellectual disability under the guardianship of the Public Advocate, reversing a long-term decline in such matters.

This may be due to an increase in the proportion of people who are eligible for the NDIS, a growing component of OPA's guardianship work. The majority of people eligible for NDIS referred to OPA have an intellectual disability.





**Figure 1.** Guardianship by disability type, 18/19

*(Note: Due to multiple disabilities, the total adds up to more than 100 per cent.)*

## Guardianship waiting list

Orders received from VCAT are triaged and placed on a waiting list, where they are monitored and assessed against risk and need.

The Intake Team initiates a range of actions at this point but does not assume full responsibility for guardianship. Inevitably, there is some time before allocation to a delegated guardian and, the larger the waiting list, the longer the wait for a delegated guardian.

This is obviously of concern to represented persons and their families. Management of the waiting list is crucial to good guardianship.

This year:

- the waiting list reached its highest point for the year at 192 on 8 March
- there has been a significant improvement in the number of people on the waiting list since that time
- on June 30 2018, there were 55 matters on the waiting list.

The substantial increase in the waiting list in the first half of the year is attributed to the loss of a significant number of experienced staff at the end of 2018 due to retirement, extended leave and new employment opportunities.

The corresponding dramatic fall in the waiting list can be attributed to new staff coming on stream, including two additional guardians, one Guardian Support Officer, and an additional full-time guardian for the expansion of the hospital pilot project in February 2019.

Due to these various factors, the average time it took to allocate a guardian for the year as a whole rose slightly.

However, by year's end, due to the improved staffing and the developing experience of new staff, the matters awaiting allocation had been on the waiting list for 32 days on average.

<b>Table 2. Days to allocate a guardian, 16/17 - 18/19</b>			
	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>
Guardianship, including community guardianship	50.51	47.90	51.48
Temporary guardianship	2.31	2.21	1.90

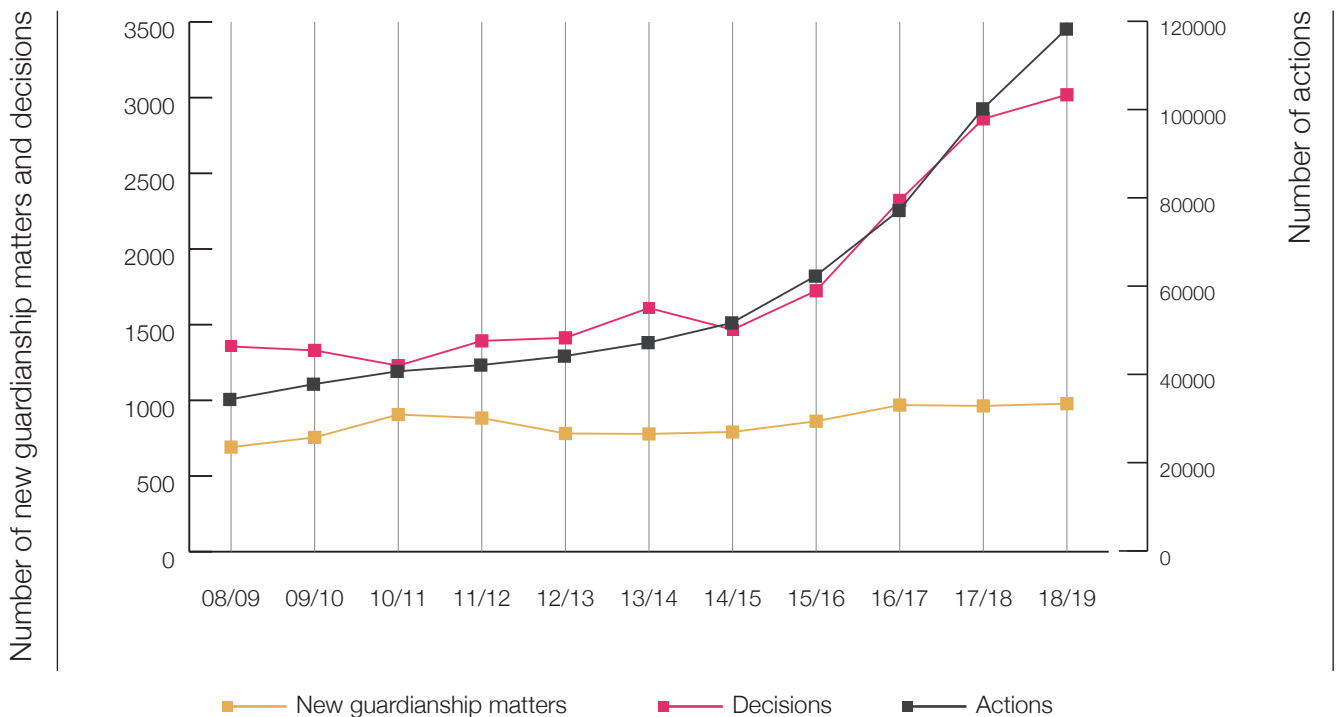


## Guardianship complexity

Assessing guardianship complexity is extremely difficult.

Every guardianship matter has multiple dimensions. These may range from complex disability presentations, to complex service provision arrangements to complex family dynamics.

To quantify the impact of complexity on workload, OPA developed proxy measures for complexity based on the number of decisions and actions required in an individual matter. The complexity of matters, as measured by these indicators continues to rise as illustrated by the figure below.



**Figure 2.** Increase in actions registered in the electronic case management system and numbers of decisions associated with increasing guardianship complexity, 18/19

**Table 3. Percentage increase in guardianship actions and decisions, 14/15 - 18/19**

Year	Guardianship matters	Actions	Decisions
14/15	791	51,218	1467
15/16	862	60,424	1724
16/17	969	73,336	2321
17/18	963	93,334	2860
18/19	978	109,028	3019
<b>% increase last 4 years</b>	<b>24%</b>	<b>113%</b>	<b>106%</b>

## Continuing impact of the NDIS on guardianship

During the year, there were 284 new guardianship orders in which the represented person was a participant in the NDIS.

This is 58 per cent of all eligible guardianship matters (that is, of the 485 new guardianship matters for people under 65 years of age - people over 65 years of age are not eligible for NDIS).

This is a substantial increase on what was reported last year.

Key NDIS issues on the program are:

- 1. Increased number of contacts.** The structure of the NDIS is such that guardians now find themselves involved with, not just the client and DHHS, but also with the NDIS, the support coordinator and multiple service providers.
- 2. A significantly higher number of actions is required for NDIS participants** to achieve an outcome when compared to non-NDIS participants, and a significant increase in the number of decisions required. This is consistent with last year. On average, NDIS matters required 77 per cent more actions and 37 per cent more decisions by guardians.
- 3. Signing service agreements.** The NDIS requires that contracts be signed for the

provision of services.

When guardians are appointed with an authority to consent to services, they will be seen as the appropriate person to sign them. In most instances, OPA is unable to sign the contracts provided as they exceed the scope of the authority of a guardian. This has led to the OPA Legal Unit developing a deed which can be signed by a guardian. This process is time-consuming but, without an agreement, NDIS participants are unable to access the services to which they are entitled.

There were 625 NDIS agreements completed this year.

- 4. OPA welcomed the development and implementation of the NDIS complex pathways initiative.** It was trialled in the west of Melbourne, among other sites, and offers a much more comprehensive opportunity for planning for participants with complex needs by experienced planners who are available for consultation during the term of the plan. Unfortunately, allocation to the complex pathways team is often fraught and, at times, has required determined perseverance from a guardian to bypass the 1800 call centre gate-keeper. Once the team is on board, the experience has generally been very positive. OPA encourages the NDIS to further develop this initiative and its roll-out across the state.

**Table 4. Comparison of actions and decisions for NDIS and non-NDIS matters, 18/19**

Matters closed during the year	Number	Actions	Decisions
NDIS matters	215	163.65	4.8
Non-NDIS matters	656	92.29	3.5

## OPA and Health Networks Pilot Project

In late 2018, pilot project partners Alfred, Eastern and Monash Health Networks agreed to expand the Pilot Project to include Northern and Western Health Networks for the third and final year of the project beginning in February 2019.

This increased the total number of guardians in the project to 2.5 EFT over the five health networks.

This pilot is now in its third year of operation, with data collection for the second year nearing completion. The mean time from VCAT guardianship order lodgement to allocation has decreased by more than half under the enhanced staffing model, from 46.5 days in the control group to 22.9 days in the first full year and a further decline to 16.1 days in the second year. Estimated resource savings are \$18,743 per patient, for a total of \$3,392,328, equating to \$6 of savings per \$1 spent on increased staffing.

Importantly, the reduction in waiting times has meant that patients in the five participating health networks who have had the Public Advocate appointed by VCAT as their guardian, have spent less time exposed to hospital-acquired complications.

As a result, it is reported that these patients have an earlier transition of care to the discharge destination best-suited to their individual needs.

As the pilot has progressed, the guardians in the project have acquired further experience and skills in dealing with patients with increasingly complex conditions, such as acquired brain injuries.

Such patients have complex medical and guardianship needs, particularly regarding NDIS eligibility and identifying of appropriate local supports.

This impacts on the time it takes for the guardians to be able to make appropriate discharge decisions.

Using cost estimates of \$1261 a day of acute care, \$1070 a day of sub-acute care and \$258 a day of transition care<sup>1</sup>, the mean cost of care within the target period has decreased from \$36,795 to \$18,053 per patient, for an estimated saving of \$18,742 per patient. Across the 181 patients in the pilot to January 2019, the total estimated value of resources saved is \$3,392,328.

**Table 5. Estimated cost per patient during wait for allocation, 15/16 - Jan 2019**

	Acute	Sub-Acute	Transition	Total
<b>Days - 15/16 Cohort</b>	3.95	25.66	16.89	46.50
<b>Days - Pilot to Jan 2019</b>	1.57	14.02	4.15	19.74
<b>Days - Decrease</b>	2.38	11.63	12.74	26.76
Saving per patient	\$3,006.30	\$12,448.54	\$3,287.30	\$18,742.14
<b>Total resources released (n = 181)</b>				<b>\$3,392,327.55</b>

<sup>1</sup> Acute estimate derived from NHCDC admitted acute cost analyses, minus operating room, special procedure suite, emergency department, critical care, prosthesis, imaging and pathology costs to reflect status as tail end of acute care: Independent Hospital Pricing Authority 2018, *National Hospital Cost Data Collection Cost Report: Round 20 Financial Year 2015-16*, table 6, p. 20. Sub-acute estimate derived from NHCDC admitted sub-acute cost analyses: *ibid.*, table 22, p. 35. Transition care costs vary between the sites included in this project, and between the use of internal and outsourced TCP beds. This value represents the lowest cost of transition care across all sites.

## Coercive authority

The Guardianship and Administration Act allows guardians to request police, the ambulance service or other service providers, to provide assistance in order to enforce a decision of the guardian.

In such instances, a hearing must be held and a formal order under section 26 of the Act made by VCAT.

The principal use of such orders is to facilitate the transport to hospital of a person who, because of a cognitive impairment, is unable to appreciate the need for treatment. This year, 26 section 26 orders were made, slightly fewer, but consistent with, the number of orders made in previous years.

**Table 6. Number of Section 26 orders, 14/15 - 18/19**

14/15	15/16	16/17	17/18	18/19
29	29	35	28	26

**Table 7. Reasons for Section 26 order interventions, 18/19**

Response to Section 26 orders	18/19
Number requiring ambulance attendance transport	17
Number requiring forced entry	0
Number requiring police attendance	12
Number requiring chemical restraint	2
Number requiring physical restraint	3

## DHHS and OPA MoU

In December 2018, there was a review of the Memorandum of Understanding (MoU) between the DHHS Secretary and OPA, signed in May 2017.

It showed that, since the signing of the MoU, the Public Advocate continued to be appointed as guardian for young people with a cognitive impairment who were under protective orders made by the Children's Court without having any contact having been made with OPA as stipulated in the MoU.

The recommendations from the review were accepted by the DHHS Secretary and the development of a revised MoU is almost completed.

Consultations with Child Protection and out-of-home care staff have since taken place on a more consistent basis. This year, OPA provided consultations to child protection staff in 22 matters where they were considering making an application for guardianship and/or administration for a young person about to turn 18 years of age.

The OPA Advocacy and Guardianship Manager also presented at DHHS head office and regional offices to further explain the objectives of the MoU.

These presentations demonstrated that there is still a poor understanding of what adult guardianship entails.

Most DHHS staff seem to assume that, as the young person with a cognitive impairment was under some form of guardianship or protective order, they will continue to need guardianship after turning 18 years of age but this is often not the case.

It is important to ensure that only those matters which truly require on-going guardianship are brought before VCAT.

### Vulnerable young women – an emerging trend

In February 2019, the OPA created the position of Principal Advocate Guardian.

One of the tasks of the role is to manage a small number of particularly complex cases from across the program.

The Principal Advocate Guardian has been guardian for eight represented persons. All are women; four are under 30 years of age, three under 50 years of age and one under 65 years of age. This group differs significantly from OPA's usual cohort.

The average age of the women is 34 years of age. All the women are eligible for the NDIS and have access to the NDIS.

The findings were:

- four had reported one or more sexual assaults during the term of the order
- five reported being held against their wishes
- four have a diagnosis of an intellectual disability
- three have a mental health diagnosis
- substance abuse was a feature in the lives of five of the women
- all had experienced homelessness
- four had slept on the streets
- all had experienced violence in their own home or in the community or both.

All had had involvement from multiple agencies that have struggled to identify how to support them to lead lives free from violence, exploitation, abuse and neglect.

They have been unable to negotiate the complex system of attaining housing and support without a substitute decision-maker or a strong advocate.

Six were homeless when a guardian was appointed. Of that group, two now have homes to call their own of which they are immensely proud, and three are waiting for permanent housing options to become available.

Despite OPA's best endeavours, some of these women have reported being raped and subject to continued violence on the streets and a number continue to engage in behaviour that puts them at risk of harm - but at least four are no longer exposed to violence on a near-to-daily basis.

These women and those supporting them have been unable to identify how to achieve the necessities of life without a guardian. Without a guardian many would still be on the streets, vulnerable and exposed. It should not be necessary to have a guardian appointed to avoid these outcomes. Only two of these women have had a substitute decision made for them regarding housing or services; they just could not negotiate the system any other way.



## Community Guardianship

The Community Guardianship Program is a small program within the larger guardianship program.

It comprises volunteers drawn from the community and gives effect to the Public Advocate's legal responsibility to involve the community in the lives of people with cognitive disabilities.

After induction and training, the volunteers act as a limited guardian for one or two individuals who are usually resident in the community. A coordinator provides advice, supervision and ongoing training.

It is a considerable commitment to be a Community Guardian as the vested formal authority is substantial. This year, 20 Community Guardians managed a total of 47 matters.

As the disability environment becomes more complex, recruiting suitable volunteers with the background, the time, and the willingness to contribute to the program becomes more difficult.

It is noteworthy then, as the 30th anniversary of the program approaches, that some active

volunteers have been Community Guardians for more than 25 years.

This year, saw prominent public recognition of two of OPA's long-serving Community Guardians: Alison Gribble received the 2018 Victorian Premier's Volunteer Champion award and Morrie Hartmann won the Casey Senior Citizen of the Year in the 2019 City of Casey Australia Day awards.



*Alison Gribble with Ernie Green, an Independent Third Person (ITP) and Corrections Independent Support Officer (CISO), received the 2018 Victorian Premier's Volunteer Champion award.*



*Community Guardian Morrie Hartmann (far left), won the Casey Senior Citizen of the Year, pictured with representatives of Casey Council.*

## Pathways from custody.... or not

The following case studies highlight, from different angles, one of the biggest issues OPA clients face: people with complex disability presentations remaining in a custodial or secure setting due to the absence of alternatives.

The case study of 'Graham' illustrates the progress that has been made in working with

the NDIS in the development of discharge options for offenders with complex needs.

On the other hand, the issues faced by 'Russell' illustrate that, where there is no suitable accommodation available, discharge from a custodial situation remains extremely difficult for people with complex needs.

### Case study - Guardianship

#### Graham

Graham, 51, was diagnosed with Huntington's Disease in 2014.

In 2015, he was remanded in custody following a serious criminal act but, in 2016, found unfit to stand trial on the grounds of mental impairment.

Graham remained in prison under a Custodial Supervision Order as he was deemed a high risk to himself and others. His condition continued to decline which led to a review by the County Court of Victoria.

While on remand, guardianship was sought because Graham was continuously vacillating in his consent to assessment and services.

In late 2018, two forensic psychiatrists advised that his condition was at a level at which he no longer presented a risk to himself or to others.

The guardian then advocated with his Multiple and Complex Needs coordinator to refer him to the NDIS for care planning.

An NDIS Planner assessed Graham in prison and a plan was developed to manage his complex behaviours, provide therapies to support his pain management and Huntington's Disease symptoms, along

with staff training, specialist coordination, community access and community transport due to his physical deterioration.

The guardian consented to the sharing of relevant information that would assist in the process and met with Graham to discuss the support available.

The NDIS plan was presented to the County Court as part of the evidence as to how Graham would be supported in a non-custodial setting.

In 2019, the court altered his supervision order allowing him to be placed in an aged care facility. Prior to release, services were arranged and he now has access to supports for accessing the community and specialist behavioural funding to support the aged care facilities staff in managing his behaviour.

The plan was arranged so that services would be in place on the day of release, ensuring there was adequate support to aid a smooth transition back into the community.

### **Russell**

Russell, 27, has an intellectual disability and particularly complex support needs stemming from a history of complex trauma.

Although Russell has an offending history, including frequent periods of imprisonment, his workers know him to be unworldly and highly vulnerable.

OPA has been involved with Russell over a period of many years. In that time, the work of supporting him has been characterised by the efforts of DHHS Disability Services workers to find and maintain suitable supported accommodation.

All of Russell's placements have broken down. This has usually occurred in response to his absconding or being imprisoned, often for offences such as damaging property, setting fires, repeatedly calling 000, and assault.

In September 2018, during a period of imprisonment, Russell's service provider at the time, known for their expertise in supporting people with complex presentations, advised that they were no longer able to continue supporting him. Since that time, DHHS has been unable to find an agency willing to accept the responsibility of supporting Russell.

Russell was released in early October 2018, to reside in a temporary accommodation facility for people on bail, but reoffended and was imprisoned again two weeks later.

Since then, Russell has been in prison in highly restrictive conditions. He is in his cell up to 23 hours a day but attempts to transition him to less-restrictive settings have all been abandoned because his behaviours escalate as soon as this is attempted.

Although the courts have indicated a willingness to release Russell since February 2019, DHHS has been unable to find suitable supported accommodation. It is accepted that Russell requires a secure setting with strong clinical support and supervision but no such setting exists.

Russell is also in the process of transitioning to the NDIS. This may provide him with funding that corresponds with his support needs but it will not result in the creation of a 'bricks and mortar' accommodation option. This responsibility is DHHS' but will cease on transition.

In the meantime, Russell remains in prison.

# Investigations

OPA conducts investigations under the *Victorian Civil and Administrative Tribunal Act 1998* in order to assist VCAT in determining if a person may need a guardian or not.

OPA may be asked to explore less restrictive options to the appointment of a guardian or administrator, the use of powers of attorney, or applications for consent to special medical procedures.

OPA also conducts much briefer investigations into urgent matters (“temporary investigations”) to establish whether there is a need for an urgent hearing.

## New investigations

New investigations for the year show a 3.9 per cent increase over last year.

Of interest is that temporary investigations have declined from 55 to 31 (44 per cent), thus, a higher proportion of all investigations have been fully detailed investigations with a corresponding increase in workload.

**Table 8. New investigations, 18/19**

	Investigations	Temporary investigations	Total
New investigations	373	31	404

## Three-year trend

The three-year trend shows an overall growth in investigations from 317 to 404, a substantial increase from 2016-17 when OPA was limited in capacity by resources.

**Table 9. Investigations, 16/17 - 18/19**

	16/17	17/18	18/19
Investigations	317	389	404

## Time taken to allocate

There has been a substantial improvement in the amount of time it takes for an investigation to be commenced from when the file is received at OPA. This continues the improvement noted in the last two years.

**Table 10. Days to allocate an investigation following receipt of VCAT order, 14/15 - 18/19**

	14/15	15/16	16/17	17/18	18/19
Investigations	31.82	34.19	20.24	13.75	9.83

## Reasons for referring investigation

Referrals from VCAT for investigation were made for a wide range of reasons and from a variety of sources.

The most common reasons are listed on the next page. The high percentage of referrals where 'evidence of need for an order' is required to be established (66.3 per cent) are due to inadequate available evidence.

It is insufficient for an appointment to be made if a person has a disability and, by reason of it is unable to make reasonable judgments.

In regard to the other reasons why a matter may be referred for investigation there is no substantial change to the prevalence of the issues: the need for evidence of disability and conflict between individuals and accommodation remain the most common issues.

However, welfare and safety, physical abuse including neglect, and issues of possible financial exploitation continue to feature strongly as well.

**Table 11. The most common reasons VCAT referred investigations to OPA, 18/19**

Issue type	Total	Percentage
Evidence of need for order	248	66.3%
Evidence of disability	93	24.9%
Conflict between individuals	78	20.9%
Accommodation	73	19.5%
Evidence of capacity	55	14.7%
EPA* financial exploitation (pre Sept 2015)	39	10.4%
Welfare and safety at risk	35	9.4%
Possible financial exploitation	33	8.8%
Healthcare and treatment	18	4.8%
Other	17	4.5%
Possible physical/emotional/other abuse	9	2.4%
Neglect - self and others	8	2.1%

\* Enduring Power of Attorney

## Investigation outcomes

OPA records the outcomes of investigations following the VCAT hearing.

Of the 368 matters completed this year:

- 29 were withdrawn
- 33 were dismissed
- five special medical procedure investigations were completed.

These figures support the understanding of the office that investigations, by clarifying issues and providing additional information, divert matters which otherwise may have proceeded to guardianship.

### Diverted from guardianship

Almost all referrals to the Investigations Unit come through VCAT. However, OPA has a limited capacity to investigate matters in circumstances where it believes there may be a need for guardianship. The following case study illustrates a successful outcome for one such 'own motion' investigation. Because there was already an administrator in place, OPA was able to negotiate with them to achieve the desired outcome; it became unnecessary to take the matter to VCAT.

Andreas, 55, lived with his brother in an apartment in the eastern suburbs of Melbourne. They were estranged from the rest of their family. In early 2019, Andreas' brother passed away in hospital following a long battle with cancer. His neighbours took turns to care for him while his brother spent five weeks in palliative care, including meals every day and prompting to undertake personal care.

In April 2019, Andreas' situation was brought to the attention of the Public Advocate who directed the Investigations Team to investigate whether there was a need for the appointment of a guardian for him. OPA investigators were able to quickly meet with Andreas, who reported that he had previously lived at a supported residential service (SRS) in an outer suburb. Andreas was happy to return to this facility.

OPA investigators also met with Andreas' neighbours and consulted with hospital social workers, who assisted with his background and provided some understanding of his cognitive capacity and care needs. OPA established that Andreas had an appointed administrator and was able negotiate relocation costs with them, the payment of accommodation fees at the SRS, and the securing of goods and chattels at the apartment, including some high-value items.

OPA was also able to contact estranged family members to discuss on-going care needs.

Consistent with his wishes, and with the assistance of a disability service, Andreas was relocated to the SRS where he previously lived.

# Medical decisions

The Medical Decisions Team at OPA was established in response to the Medical Treatment Planning and Decisions Act 2016, which came into effect on 12 March 2018. Under this legislation, and in certain circumstances, health practitioners can directly request the Public Advocate to make medical treatment decisions where the medical decision required would constitute significant medical treatment (as defined under the Act). This is instead of applying to VCAT for the appointment of a guardian.

The initial contact to the Medical Decisions Team usually comes via the submission of a section 63 or section 62 form online (the forms are available on the medical forms page of OPA's website). These forms relate to

the sections of the Act which give the Public Advocate the authority to make significant medical treatment decisions (section 63) or to respond to a notification of a refusal of significant medical treatment by a medical treatment decision maker (section 62). The Medical Decisions Team does not make routine medical treatment decisions and nor does it have a role in making decisions about emergency treatment. The team is also the contact point for health practitioners to forward a copy (via email or fax) of a medical research practitioner's certificate (section 81).

Last year, data was only available for 12 March 2018 to 30 June 2018. For these three months, there was a total of 159 matters.

**Table 12. New medical treatment decisions, 18/19**

<b>Section 62</b>	<b>3</b>
<b>Section 63</b>	<b>455</b>
Capacity regained	9
Medical decision-maker found	26
Treatment consented to	305
Treatment determined to be emergency	46
Treatment determined to be routine	8
Treatment determined to be palliative	2
Treatment refused	1
Offer of treatment withdrawn	12
Other	46
<b>Section 81</b>	<b>8</b>
<b>Total</b>	<b>466</b>

The majority of matters originating from an inpatient health service are resolved in three to four days. For community matters, which usually involve planned treatments, a matter may take up to a week to a week and a half.

In circumstances where treatment has not occurred within four weeks, the matter is reviewed and an extension of time is given. A letter explains the extension to applicants.

There were 26 of these longer-term matters last year.

### Distribution of applications

The majority of applications (423 or 92.3 per cent) are received from public health services throughout the state, with a much smaller proportion being received from GPs, specialist medical services and private hospitals (43 or 7.7 per cent).

Unsurprisingly, the greatest number of applications come from the major metropolitan hospitals, with the larger rural health services also contributing to the overall picture.

Based on population distribution, the office expected to see more applications from rural health networks.

**Table 13. Hospitals making applications for medical treatment decisions, 18/19**

<b>Top five metropolitan hospitals</b>	<b>Applications</b>
Alfred Hospital	59
Monash Health	52
Austin Hospital	34
Eastern Health	31
St Vincent's Health	27
<b>Top five rural hospitals</b>	
Bendigo Health	14
Ballarat Health Services	12
Barwon Health	7
East Grampians Health Services	6
North East Health (Wangaratta) and Goulburn Valley Health (Shepparton)	4
<b>Dental matters</b> (predominantly Royal Dental Hospital)	<b>40</b>

## Current and future trends

As familiarity with the principles, use and application of the Medical Treatment Planning and Decisions Act increases, the language of values and preferences is emerging in considerations of medical treatment options which better match the patient's preferences and values.

Health networks have expressed appreciation of the reports made by Medical Decisions Team for the role it has played in clarifying the reasoning behind the decisions and in the development of understanding of the Act.

OPA notes that there remains poor knowledge by health practitioners of emergency treatment provisions. Some practical issues arise when consent is sought to put a patient on a waiting list for treatment without any clear indication when the treatment may occur.

In these situations consent for treatment is provided for a limited time only as conditions may change if there is a substantial delay. In such circumstances, a further application at a later date may be required.

There are also expectations that, as hospitals are 24/7 services, requests for medical treatment decisions from guardians (or section 63 matters) can also be made 24/7 and responded to with very short turnaround times. This is not possible due to the section 61 requirements on the medical treatment decision maker to be guided by the preferences and values of the person under the Act.

Areas in which OPA expects some further development over the next year, are:

- requests for medication consents. Significant medication decisions also fall within the decision-making authority of the medical treatment decision maker
- values directives and/or instructional directives coming into circulation and their subsequent use for medical treatment decision making
- a possible confusion of advance care directives with provisions under the voluntary assisted dying legislation
- an increase in section 62 notices as refusal of treatment decisions become more common and doctors struggle to reconcile their view of the patient's interests with decisions made by the medical treatment decision maker using the legislative framework of the patient's values and preferences.



### Joan

Joan was admitted to hospital with a severe lung infection, most likely the result of aspirating her food.

Doctors subsequently proposed the insertion of a percutaneous endoscopic gastrostomy (PEG) tube, under sedation, for the purpose of artificial feeding and hydration and to minimise her further risk of aspiration.

Doctors determined this medical treatment to be significant (as defined in the Act) because of the level of bodily intrusion and the level of distress experienced by Joan.

While the risks and side-effects for the insertion and use of the PEG tube were identified by doctors as minimal, there would be significant risks were Joan to pull out the PEG tube.

Joan was initially assessed as lacking the decision-making capacity to make this medical treatment decision. Her brother, while otherwise meeting the criteria for a medical treatment decision maker, was not willing to act in this role because a possible consequence, if the treatment was refused, was that Joan would die. Yet, refusing treatment was exactly what Joan had consistently expressed to her doctors both during and prior to admission.

Joan also had a diagnosis of schizophrenia which was well-managed with medication. But she was also experiencing a deterioration in her physical health conditions.

The resultant changes in Joan's lifestyle, caused by her ongoing poor health, meant she said she did not wish to continue living in this fashion.

Subsequently, doctors lodged an application pursuant to section 63 of the Act requesting the Public Advocate make the medical treatment decision.

An OPA officer was allocated to consider the decision.

As required under the Act, the officer considered Joan's expressed preferences and values and those inferred from her life prior to her hospital admission. The officer concluded that the decision Joan was likely to have made, if she had decision-making capacity, would have been to refuse the insertion of the PEG tube, notwithstanding the consequences of that decision.

A recommendation was drafted for the Public Advocate outlining the proposed decision and seeking approval for it. However, at this point, further assessments concluded that Joan had regained decision-making capacity, most likely due to improved nutrition and medication during her admission.

As such, there was no further role for OPA. Joan confirmed her decision to refuse the PEG and, as there was no longer any question as to capacity, the doctors were obliged to follow her wishes.

Joan passed away a week later.

# Advocacy

## Individual

Advocacy involves standing beside the person with a disability, promoting their rights and interests and, if necessary, working to protect them from exploitation, abuse and neglect.

While advocacy occurs in the context of guardianship and investigation, OPA also undertakes work directly as an individual advocate for people with a disability.

OPA's involvement in advocacy varies from short-term interventions, to lengthier and more complex involvement and specialist involvement in matters related to the *Disability Act 2006*.

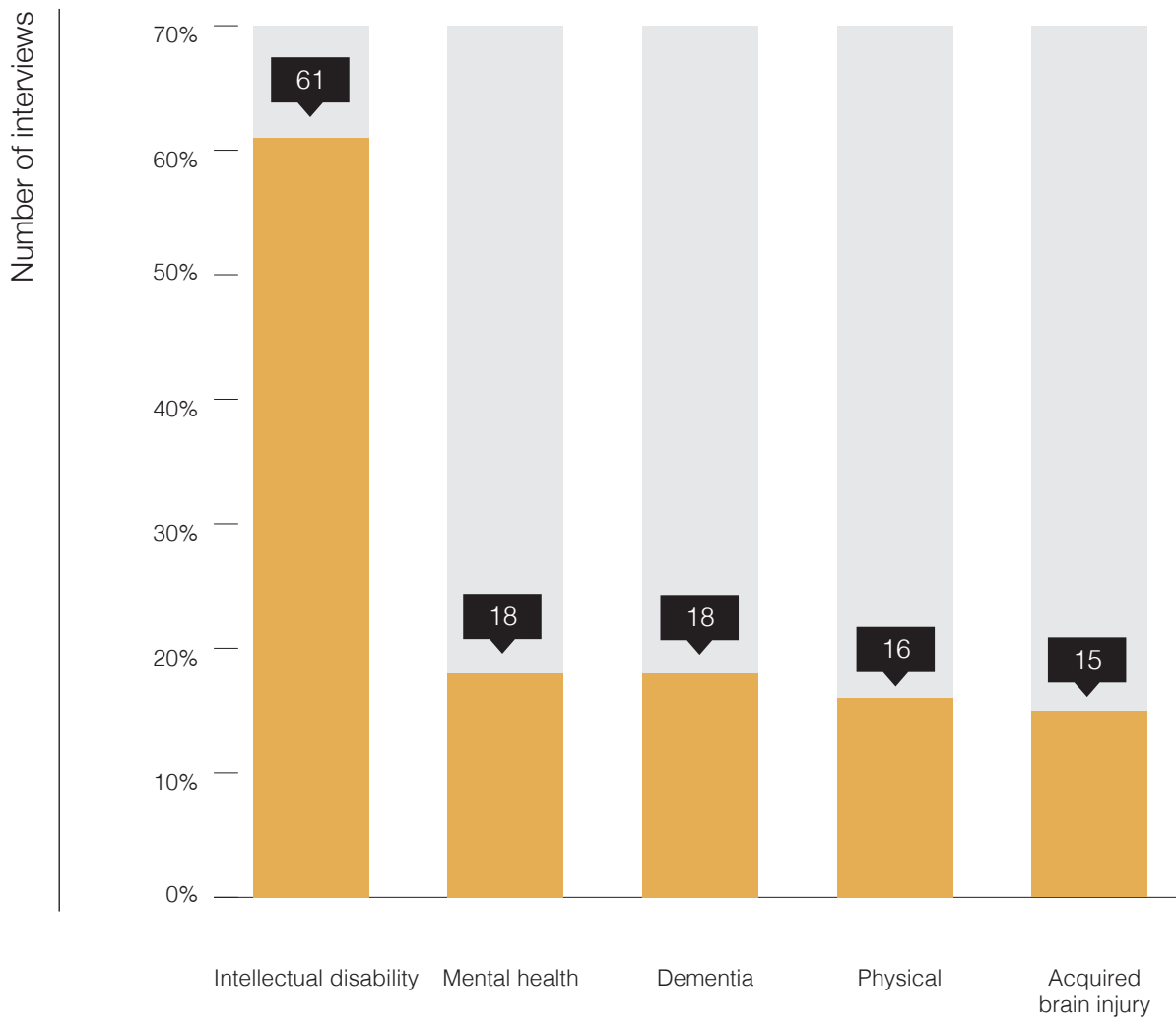
**Table 14. New advocacy matters, 18/19**

Individual advocacy	Disability Act advocacy	Short-term advocacy	Total
46	97	115	258

Findings in relation to OPA's advocacy this year include:

- matters have decreased by 20 per cent
- Disability Act officer interventions remain the largest single contributor to OPA individual advocacy
- the office continues to provide advocacy under the *Severe Substance and Dependence Treatment Act 2010*, however, only seven matters were referred this year. These figures are included under individual advocacy.

- the disability profile of individuals referred for advocacy is substantially different when compared to all matters referred to the office. Intellectual disability is by far the largest disability type at 60.6 per cent of all advocacy matters, whereas, intellectual disability only constitutes 37 per cent of total matters referred to the office. This is, in part, explained by noting that there are specific legislative provisions under the Disability Act which affect people with intellectual disability.
- short-term advocacy increased.



**Figure 4.** Advocacy by disability type, 18/19

*(Note: Due to multiple disabilities, the total adds up to more than 100 per cent).*

## Disability Act

<b>Table 15. Residential notices, 17/18 - 18/19</b>		
	<b>17/18</b>	<b>18/19</b>
Section 74 Notices of temporary relocation	32	38
Section 76 Notices to vacate	12	6
<b>Total notices</b>	<b>44</b>	<b>44</b>
Casework	156	144

Overall, OPA received the same number of residential notices (44) this year as last. There are two types of residential notices: a notice of temporary relocation issued under section 74 of the Disability Act, and a notice to vacate issued under section 76 of the Act. Typically, a notice to vacate can only be given if a notice of temporary relocation precedes it.

Last year, 32 of the notices were to relocate a person temporarily; 15 of those related to the resident's behaviour and 14 to repairs and renovations often associated with the improvement of properties for the purposes of the NDIS.

This year, there were 38 notices of temporary relocation, 14 related to the resident's behaviours and 22 to repair or renovations of the premises.

The increase in temporary relocation notices for repairs and maintenance in the last two years reflects the need to raise the standard of properties to comply with specialist disability accommodation standards. In the three years prior to last year, OPA received only one notice for the purpose of repairing or renovating a property.

It is pleasing that the NDIS is driving an improvement in the fabric and quality of homes for participants.

Next year, there will be a transition for many residents from the residential rights under the Disability Act to Part 12A of the *Residential Tenancies Act 1997*. Part 12A also includes notices of temporary relocation and notices to vacate. But there will be new notices, such as where a resident intends to vacate the property, where an owner wants to sell the property or where a lender wants to sell the property for non-payment of a mortgage.

### VCAT liaison

The VCAT liaison officer, based at VCAT, provides an important liaison function for both OPA and VCAT.

The role aims to:

- enhance cooperation between VCAT and OPA, including liaison with registry
- assist clients and interested parties understand the process of guardianship hearings and the implications of, either, being appointed as a guardian, or being the subject of a guardianship order
- provide advice to VCAT members on OPA's capacity and functions
- assist OPA staff in appearances before VCAT when required.

This year, the liaison officer provided assistance in 668 matters, an increase of 47 matters (7.6 per cent) on last year.

# Systemic

OPA's systemic advocacy focussed on the eight reform goals articulated in the OPA Strategic Plan.

## NDIS

This was the final year of NDIS transition for Victoria's state disability services, and legislative reform activity was intensified to facilitate the necessary shifts from the existing service system to the NDIS.

OPA remained connected to emerging patterns of systems and services through the office's frontline services and the Community Visitors Program and, as a result, it was able to bring emerging systemic concerns to the attention of law-makers.

OPA provided extensive, sometimes confidential, advice to government about a range of reform initiatives as part of this process.

## Transitional arrangements

OPA has been a strong advocate for maintaining tenancy protections for people using existing residential services, the majority of which have been rebadged as 'specialist disability accommodation' (SDA) under the NDIS.

As well as continuing to provide expert advice on the Victorian Government's NDIS housing working group, OPA was consulted on the Disability Services Safeguards Bill, before it was introduced to Parliament and passed in late 2018.

In addition to this work, OPA was invited to join the Victorian Government's Disability Act Advisory Group to inform the content and scope of the first stage of the review of the Disability Act. OPA gave detailed feedback on the draft Disability (National Disability Insurance

Scheme Transition) Amendment Bill 2019 in relation to the role of Community Visitors in the new environment, and in relation to restrictive practices and the role of the Senior Practitioner.

The bill was enacted in June 2019.

## Guardianship as a last resort for NDIS matters

OPA continued to hold discussions with the NDIA to improve the agency's understanding of guardianship and to establish effective processes in cases where participants under a guardianship order interact with the scheme.

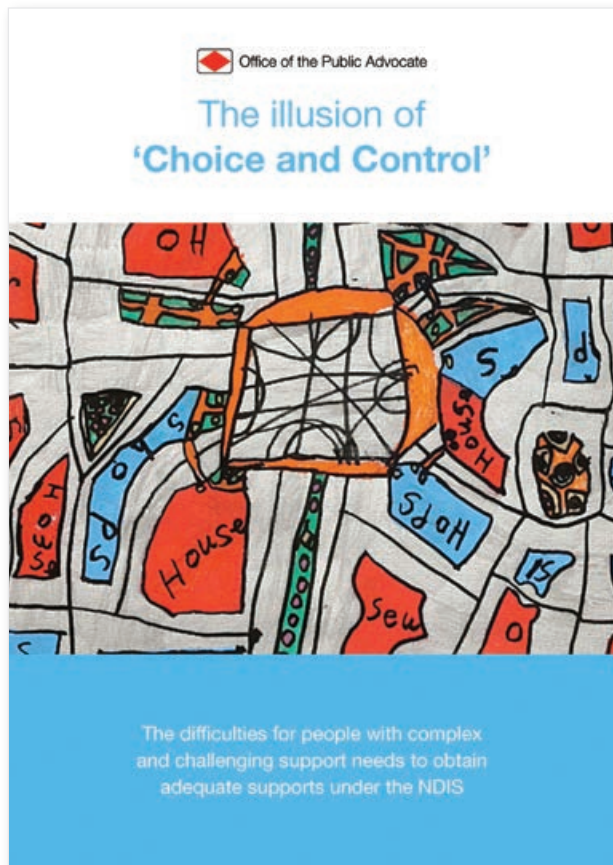
However, OPA considers that, in most cases, a person with cognitive impairment should not need a guardian to access or interact with the NDIS, and that the NDIA has a responsibility to assist people to become participants.

Key points of the process that have caused difficulties include initially accessing the scheme and signing service agreements.

OPA continues to produce publications and resources on this topic and maintains regular contact with the NDIA. For example, OPA published a fact sheet and flowchart on NDIS decision-making, 'Working with participants with significant cognitive disability'.

## People with complex needs

Without adequate support, people with a dual disability or behaviours of concern are at risk of experiencing crises which require urgent responses to prevent adverse outcomes such as homelessness or interaction with the justice system.



These issues were highlighted in the OPA report, *The illusion of 'Choice and Control': The difficulties for people with complex and challenging support needs to obtain adequate supports under the NDIS*.

As the client stories in the report illustrate, people in this cohort experience many challenges in obtaining adequate supports under the NDIS, including difficulties in becoming participants at the earliest possible opportunity, and engaging and retaining service providers and suitable accommodation.

The report makes 15 recommendations to improve system, service and operational issues to ensure the scheme delivers the intended transformational benefits for all people with disability.

## Thin markets

OPA also continues to identify areas in the NDIS where the supply of specific supports does not meet the demand or needs of participants.

OPA prepared a submission to the NDIS Thin Markets project which explored thin markets that disproportionately affect people with cognitive impairment. The submission made 11 recommendations addressed to government and the NDIA in respect of: participants with complex needs, SDA, short-term accommodation and assistance and psychosocial disability supports.

In its submission, OPA also raised concerns about threats to funding for advocacy and other safeguards for people with disability, and stressed the importance of independent safeguards in the realisation of the promise of the scheme.

## Service agreements

OPA also has concerns about many of the NDIS service agreements that advocate guardians are being asked to sign on behalf of participants. The *'NDIS service agreements: Making choice and control more real'* report explores concerns such as inappropriate rights of assignment, indemnities and liabilities and personal responsibilities, inadequate descriptions of services and improper signing of agreements.

These are national issues.

The report made a series of recommendations to address these concerns to ensure that participants, plan nominees and guardians are not being required to sign unfair and onerous agreements. The NDIA responded to the report and the response is included in the report.

## Community Visitors

OPA is concerned to ensure that Victorians are not disadvantaged in the transition to the NDIS and corresponding national safeguarding arrangements.

The Commonwealth has, to date, declined to roll-out an independent visitor model at a national level, leaving it to states and territories to decide whether to run such programs.

The Victorian Government strongly supported the retention of the Community Visitors Program. The changing framework is creating significant operational challenges in respect of the types of facilities Community Visitors are able to visit. However, OPA played a key role in ensuring the amendments to the Disability Act maintain the right of Community Visitors to attend respite facilities.

The office and the Community Visitors Program, with support from DHHS and the Department of Justice and Community Safety (DJCS), are continuing to work through these transitional issues to ensure that the program continues in the new environment.

OPA has also drawn attention to a range of issues that must be resolved in Australia's implementation of the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), in a submission to the Australian Human Rights Commission.

That submission highlighted support for an independent monitoring mechanism, such as the Community Visitors Program, within the disability space and the equally important role of such a program in the aged care sector.

## Violence, abuse, neglect and exploitation

OPA welcomed the announcement of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability and made a submission in respect of the draft terms of reference.

It emphasised the need for the commission

to focus on the protection and promotion of the human rights of people with disability. OPA called for the commission to be provided with sufficient resources to undertake its work, to ensure that every effort was made to support the full participation of individuals who have experienced violence, abuse, neglect or exploitation during their lifetime, including with the support of properly funded independent advocacy organisations.

In a submission to the *Victorian Disability Advocacy Futures Plan 2018-2020* discussion paper, OPA also raised the positive role that advocacy organisations play in the lives of people with disability, particularly in a consumer-choice driven system like the NDIS.

## Elder abuse

OPA has continued to build and to share knowledge about elder abuse and work to improve prevention and response strategies. OPA is a trusted adviser to government on this topic, with representation on the Victorian Government Elder Abuse Advisory Group, the Victoria Police Seniors Portfolio Reference Group and the Victoria Police Elder Abuse Pilot Advisory Group.

OPA shares its knowledge and expertise through speaking engagements and panel representation, for example, at the Strengthening Hospital Response to Family Violence Conference, the Peter Mac World Elder Abuse Awareness Day Grand Round and at the Australian Guardianship and Administration Council (AGAC) Conference.

In addition to this, OPA publishes research findings and resources to improve prevention and response strategies.

## National projects

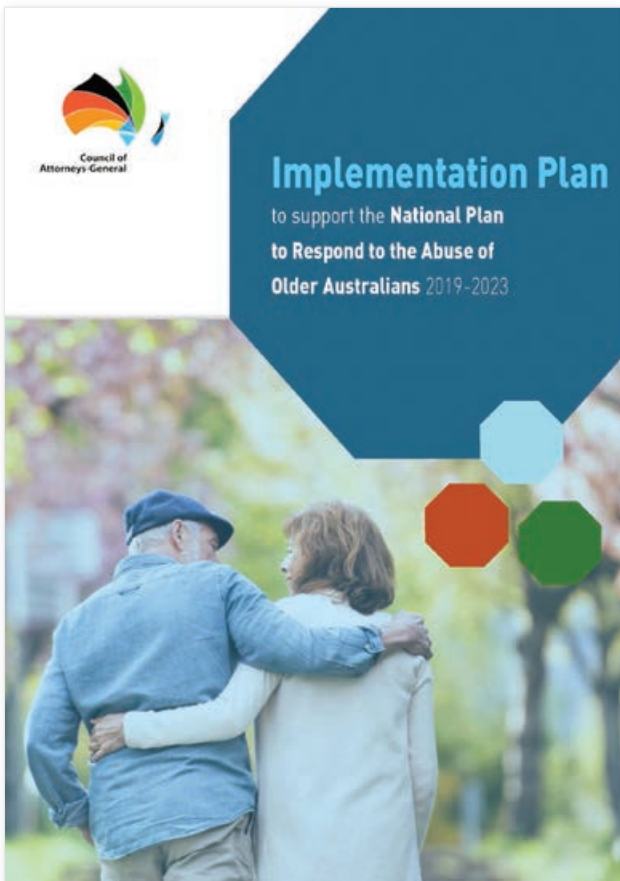
On behalf of AGAC, OPA is leading two national projects on financial enduring powers of attorney, funded by The Australian Attorney-General's Department.

The first project is to develop a national best practice resource for enduring appointments which will provide practical national guidance on the use of financial enduring documents.

The second project, undertaken in conjunction with the Protecting the Rights of Older Australians Working group, is to develop an options paper about financial enduring appointment laws and practices throughout Australia.

The paper was completed in December 2018 and is being considered by the Enduring Power of Attorney Working Group of state and territory officials as part of the program of work to implement the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*.

The implementation plan includes a commitment by DJCS to assess Victorian enduring power of attorney laws against the recommendations made in the paper.



OPA's work in elder abuse is a part of this national plan.

## The criminal justice system

The significant over-representation of people with disability and mental illness in prisons represents a failure in the provision of appropriate supports, early intervention and alternative pathways. OPA has undertaken the following activities to work towards addressing these matters.

### NDIS justice interface

The Council of Australian Governments' Disability Reform Council (DRC) has responsibility for implementing the National Disability Agreement, National Disability Strategy and the NDIS.

The DRC Senior Officials Working Group (SOWG) supports the decision-making of the DRC. The Justice sub-SOWG is a sub-committee of the SOWG established to provide advice to it on the NDIS justice interface.

OPA partnered with the Australian Federation of Disability Organisations and Victoria Legal Aid to brief the sub-SOWG on case studies and issues identified in relation to pre-release NDIS planning.

Public Advocate Colleen Pearce addressed the sub-SOWG about OPA clients who have complex and challenging support needs who are not seeing the benefits that the NDIS is intended to deliver.

OPA recommended, among other things, that all services that interact with people with disability, including places of detention such as prisons and mental health services, should adopt protocols to identify whether people entering their service are NDIS participants or potentially eligible to be so, and to facilitate access requests at the earliest opportunity.

### Criminalisation of people with disability

OPA is also concerned about the criminalisation of people with disability through the use of intervention orders in circumstances where a person with a cognitive impairment may not understand or be able to comply with the conditions of the order. As a result, people with disability may be charged for breaching

the order, and potentially remanded into custody.

OPA raised this issue in a submission to a coronial investigation. The Coroner subsequently recommended that the Attorney General review the law and, as part of it, consider including provisions that, when deciding whether to make a final order, enable the court to consider the ability of a person with a cognitive impairment to understand and comply with conditions.

## Parenting with disability and mental illness

Another key strategic priority of the office is to maximise the ability of parents with disability and parents with mental illness to care for their children.

### Child protection

In last year's annual report, OPA raised concerns that children with disabilities were entering the child protection system because their parents were unable to access sufficient support from the NDIS to care for them at home.

OPA continues to participate in the steering committee of the Steps to Speaking Up Project, Stage 2, coordinated by VALID and funded by DHHS, to develop advocacy support for parents with disabilities in the child protection system.

OPA also continues to undertake advocacy to ensure that young people with a cognitive impairment receive protection and support before and during the transition from one protective regime, under the *Children, Youth and Families Act 2005*, to another under the *Guardianship and Administration Act*.

In terms of child safety, OPA made a submission to the Victorian Review of Child Safe Standards. The submission noted the importance of a rights-based approach, and the need to recognise children who are unable to live at home and LGBTI children as particularly vulnerable, among other things. The submission also pressed for a national approach to child safety.

In addition to this, OPA advocates for the rights of parents with disability and parents with mental illness to care for their children through representation on the Royal Children's Hospital Community Advisory Committee and the Clinical Working Group of the Senior Master's Office on Parents with Disability.

### Family law

OPA made a submission to the Australian Law Reform Commission's review of the family law system, outlining the systemic barriers to people with disabilities.

OPA was pleased that the commission's report recommended an amendment to section 60CC of the *Family Law Act 1975* to provide that the court should have regard to the carer's ability and willingness to seek support to assist them with caring, as recommended in the OPA submission.

In addition to this, OPA made a range of recommendations concerning the appointment and operation of a litigation or case guardian for adults with disabilities involved in parenting or property disputes in the Family Court or the Federal Circuit Court.

OPA was similarly pleased to see that the commission report recommended that the Family Law Act should include provisions for the appointment of a litigation representative where a person with disability is unable to conduct the litigation.

## Supported decision-making

OPA has continued to drive supported decision-making practice reforms and resource development as a key strategic objective of the office.

Last year, OPA established a practice group to explore the extent to which supported decision-making can be applied in the context of guardianship. This year, OPA engaged a consultant to re-establish and lead the work of the group as the office works towards implementation of the new Guardianship and Administration Act, and to review the office's standard operating procedures.

That work will commence in July 2019.

### **National supported decision-making pilot**

OPA was invited to sit on the Advisory Group for the Commonwealth Department of Social Services national pilot of the provision of decision-making support for people who were interacting with, or clients of, the NDIS.

Pilot participants have limited decision-making capacity and do not have access to other appropriate decision-making support. The pilot focussed on decision-making relating to it.

The pilot is intended to provide evidence of the extent of the need for such a service, and to inform future policy development concerning the supports that this group of NDIS participants require in order to engage with it.

### **Supported decision-making legal and policy reforms**

OPA continues to promote legal and policy reforms that enable and encourage supported decision-making developments.

For example, OPA is preparing a report, *Decision Time*, which will make recommendations, and highlight recommendations made by law reform commissions that are yet to be enacted, aimed at improving Australia's compliance with the United Nations Convention on the Rights of Persons with Disabilities. Needless to say, the promotion of supported decision-making opportunities is a frequent theme in this report.

## Other regulatory gaps

### **Aged Care Quality and Safety**

OPA made a submission to the Inquiry into the Aged Care Quality and Safety Commission Bill 2018 and a related Bill.

The submission recommended the inclusion of further protections, such as the establishment of a voluntary community visitors scheme like that which operates in Victorian Disability Services, and the appointment of a chief clinical adviser (similar to role of the Victorian Senior Practitioner) to provide expert advice in relation to restrictive practices and to facilitate ongoing improvements in clinical practice.

The regulation of restrictive practices in aged care was also raised in the OPA submission to the draft terms of reference for the Royal Commission into Aged Care Quality and Safety.

The commission also requested that OPA, and equivalent agencies in other states and territories, provide information related to its involvement with the aged care sector. Specifically, it requested statistical data and asked how people in aged care might receive safe, high quality services and timely and efficient healthcare.

OPA also presented on the topic of young people in aged care at a Monash University seminar on the 'Rights and choices of young people'.

### **Mental health**

OPA made a submission to the draft terms of reference for the Royal Commission into Victoria's mental health system. The submission raised the importance of talking about the person as a person, not just as a diagnosis, and advocated strongly that the terms of reference specify that the inquiry will be a wholesale systematic review – not just looking to tweak the existing service system.

OPA subsequently commenced preparation of a comprehensive submission to the Royal Commission.

OPA's submission will focus on the need

for mental health legislation and policies to operationalise a person-centred approach, and address safety risks and abuse within mental health services, with a focus on seclusion, restraint and compulsory treatment.

The submission will also consider the impact of shortages in community-based, supported accommodation for people with chronic mental illness, and the need for more forensic mental health services.

### **Review of reportable deaths in Victoria**

OPA responded to a consultation request concerning reportable deaths in Victoria.

The submission considered the benefits of a reportable deaths system for systemic practice improvements. The submission also highlighted the issue of whether deaths in SDA (NDIS) will be routinely examined in the way deaths in current state disability services are.

## **Other work**

### **National guardianship data**

OPA led a national AGAC project to collate state and territory data on guardianship and administration appointments.

This is the first time that national data on the rate and type of tribunal appointments has been available and provides a baseline from which to measure the impact of reforms such as the roll-out of the NDIS on the guardianship and administration systems.

The data is available on the AGAC website.

### **New guardianship legislation**

The office welcomed the passing of the new Guardianship and Administration Act, which comes into effect on 1 March 2020. A primary object of the Act is to protect and promote the human rights and dignity of persons with a disability by having regard to the Convention on the Rights of Persons with Disabilities.

The right to make, participate in and implement decisions that affect their lives, and to be provided with support to do so, is one of the most important human rights for the

people OPA works with, people with disability.

Under the new legislation, VCAT may appoint a supportive guardian or administrator. If there is no less-restrictive option available, VCAT may still appoint a guardian, but the guardian must ensure that the person's will and preferences are followed, unless this would significantly harm the person.

The new Act retains the Public Advocate as an independent statutory office charged with promoting the human rights of people with a disability and provides a new clear statement of the Public Advocate's functions and powers, which include protecting people with disability from abuse, neglect and exploitation; and undertaking advocacy for those with a disability on a systemic or individual basis, among others.

OPA has long-advocated for a human rights approach to guardianship and for many of the reforms in the new legislation. The office is now working towards implementation of the new laws.

# Safeguarding

## In care

*OPA Volunteers at their annual conference.*



OPA is proudly supported by over 700 volunteers who safeguard and uphold the rights of people with a disability.

The volunteers come from diverse backgrounds and communities but all share a common interest of wanting to making a difference in the lives of people with disability.

### Community Visitors

Community Visitors are appointed by the Victorian Governor in Council under three separate Acts of Parliament: the *Mental Health Act 2014*, the *Supported Residential Services (Private Proprietors) Act 2010* and the *Disability Act 2006*.

They are empowered by law to visit Victorian accommodation facilities for people with a

disability at any time, unannounced, to monitor and report on the adequacy of services provided.

Community Visitors are the eyes and ears of the community and perform a vital role of safeguarding the rights of people with a disability to ensure that they are not subject to abuse, neglect or exploitation.

They talk to residents/patients to identify issues of concern and liaise with staff and management to resolve them. Broader or more serious issues are referred to OPA.

During the year, 435 appointed Community Visitors and 83 Community Visitors in training visited 1466 accommodation facilities for people with a disability.

Many of the 11,000 plus residents/patients visited by Community Visitors are socially isolated and marginalised, and few have family or social supports. Without Community Visitors advocating on their behalf, many of these vulnerable Victorians would be at greater risk of harm, abuse or exploitation and their opportunities for more fulfilling lives would be greatly reduced.

Community Visitors routinely advocate on behalf of individuals to ensure their wishes are considered and, wherever possible, seek to build the capacity and resilience necessary to enable people to stand up for themselves.

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OPA is proudly supported by over 700 volunteers who safeguard and uphold the rights of people with a disability.



In the past, Community Visitors were instrumental in closing institutions throughout the state and, now, more than 32 years later, they are taking up NDIS issues including eligibility, plans and delays in service provision.

With the NDIS governing the support for many of the residents in supported accommodation facilities, it is more important than ever that Community Visitors ensure that these vulnerable Victorians are treated fairly and equitably, while simultaneously ensuring those ineligible for the NDIS do not lose their much-needed supports.

### Training and support

OPA invests heavily in necessary training and supporting Community Visitors.

During the year, a total of 53 training sessions were held with over 383 Community Visitors attending.

During the latter half of the year, an Abuse Detection Training Module was developed with a program reference group including Community Visitors, people with disability and a leading disability academic.

National Disability Services was contracted to work on developing this training session and to assist with the initial roll-out of it across the state.

Documenting abuse is one of the most complex and challenging aspects of a Community Visitor's role and the training is designed to improve their understanding and skills, as well as their self-care, as these are often distressing matters.

Community Visitors' work in this area has led to referrals to the Disability Services Commissioner, DHHS, the Mental Health Complaints Commissioner and the Coroner, not to mention a string of both state and federal inquiries and investigations.

A review of the Community Visitors Program against the National Standards for Volunteering commenced this year. Four of the eight standards have been reviewed to date showing that the program is operating in accordance with what is considered to be best practice for a volunteer organisation.

The Combined Community Visitors' Board is overseeing this process and considering the proposed responses to any identified issues.

**Table 16. Number of Community Visitors and number of visits per stream, 18/19**

Stream	Community Visitors	Visits
Disability Services	266	2952
Mental Health	80	1670
Residential Services	78	905
<b>Total</b>	<b>424</b>	<b>5527</b>

*(Note: There was an approximate 5 per cent increase in visits over last year).*

A compilation of data over the last five years from visitations by Community Visitors is below.

<b>Table 17. Community Visitor performance over the last five years, 14/15 - 18/19</b>			
<b>Stream</b>	<b>Visits</b>	<b>Issues identified</b>	<b>Abuse issues identified</b>
Disability Services	14,705	26,473	772
Mental Health	7443	8424	519
Supported Residential Services	4110	3807	446
<b>Overall totals</b>	<b>26,258</b>	<b>38,704</b>	<b>1737</b>

With the NDIS and national safeguards in place, the Victorian Government has shown support for the continuation of the Community Visitors Program. The operational details and impacts to the program, particularly for the Disability Services stream, however, are still being worked through.

# In police stations

Independent Third Persons (ITPs) support alleged offenders, victims and witnesses of all ages who have a cognitive impairment such as an intellectual disability, a mental illness or an acquired brain injury in police interviews.

Police interviews often require people to comprehend complex issues and information quickly, understand their legal rights and be able to communicate with people in positions of authority. ITPs are trained to support and assist victims, witnesses and alleged offenders during the interview process.

They are independent of the police process, but do not instruct a person on how to deal with the issue they are facing nor do they provide legal advice.

ITPs support some of the most vulnerable people in the community with over 80 per cent of clients having a disability and 12 per cent having two or more disabilities. Their involvement with the criminal justice system often adds to a very complex life situation and can exacerbate their vulnerability.

## Overview

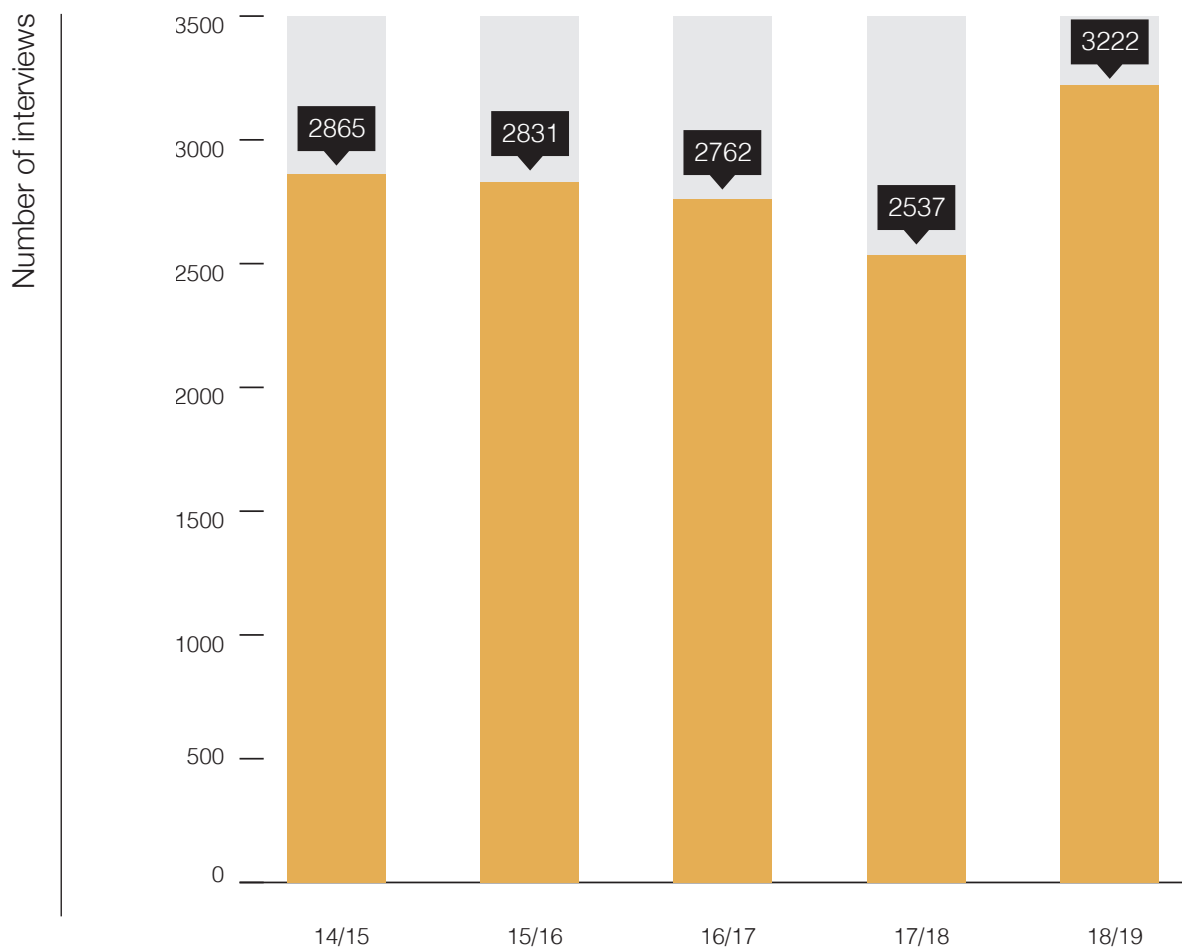
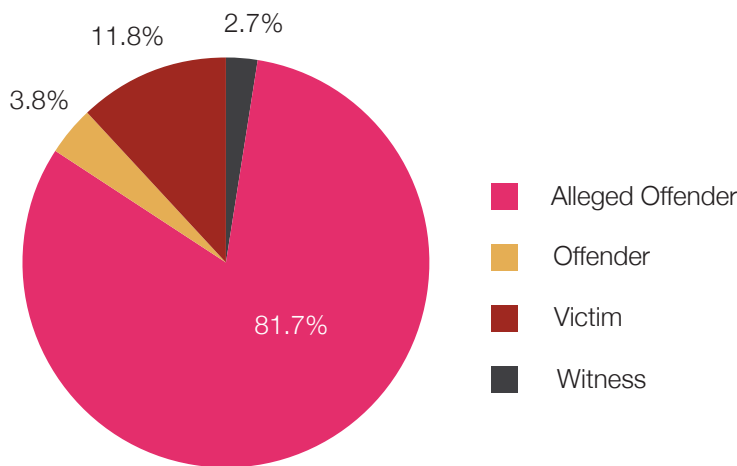


Figure 5. Number of ITP interviews, 14/15 - 18/19

During the year, 193 ITPs attended 3222 interviews assisting 2278 clients. This represents a 27 per cent increase in interviews attended over last year.

The average number of interviews a month was 269, an increase from last year's 211. ITP volunteers supported clients in an average of 17 interviews a month this year compared with 13 last year.

Alleged offender interviews made up the largest group at 81.7 per cent, followed by victim interviews at 11.8 per cent. Sex offender register interviews were 3.8 per cent of all interviews and witnesses were 2.7 per cent.



**Figure 6.** Percentage of ITP interviews by client type, 18/19

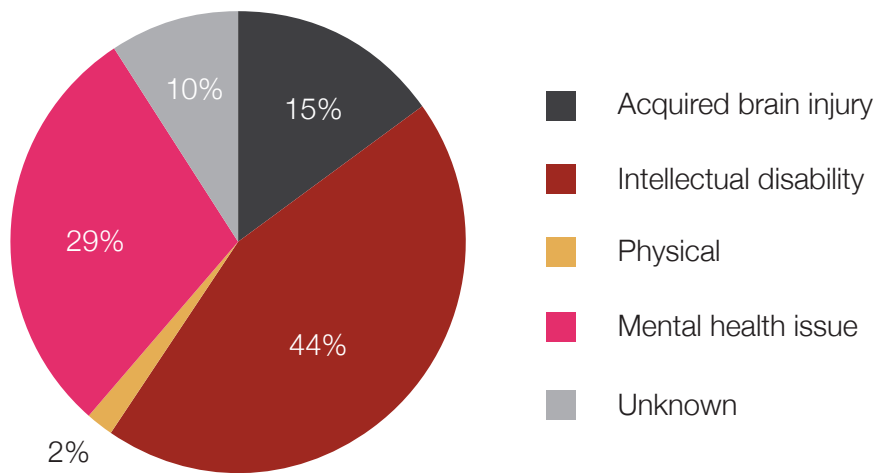
## Client profile

Males comprised 75.4 per cent of all ITP clients across all interview categories, with females constituting 24.2 per cent. A very small number of clients identified themselves as intersex, transgender, both sexes or other.

The proportion of interviews with Aboriginal or Torres Strait Islander clients has remained steady at 16 per cent compared to 15 per cent last year. The majority of these interviews were at Mildura, Bendigo, Bairnsdale, Morwell and Ballarat police stations.

Males constituted 93 per cent of alleged offenders, while 66 per cent of victims were female.

During the year, almost half of the clients requiring an ITP had an intellectual disability (44 per cent), similar to last year (48 per cent). Other disabilities included mental illness (29 per cent) acquired brain injury (15 per cent) and physical disability (two per cent). In ten per cent of cases, the client's disability was unknown. In most instances, the police or client identified the disability.



**Figure 7.** ITP clients and type of disability, 18/19

ITP clients ranged in age from young people to the elderly.

The largest group of clients were 18-25 years of age (22.8 per cent), while the second largest were 26-35 years of age (21.6 per cent).

Other age groups were those 36-45 years of age (17.7 per cent), under 18 years of age (14.3 per cent), 46-55 years of age (11.2 per cent), 56-65 years of age (3.5 per cent) and 65 plus years of age (0.7 per cent).

Age was not specified for 8.2 per cent of interviews.

### Type of offence

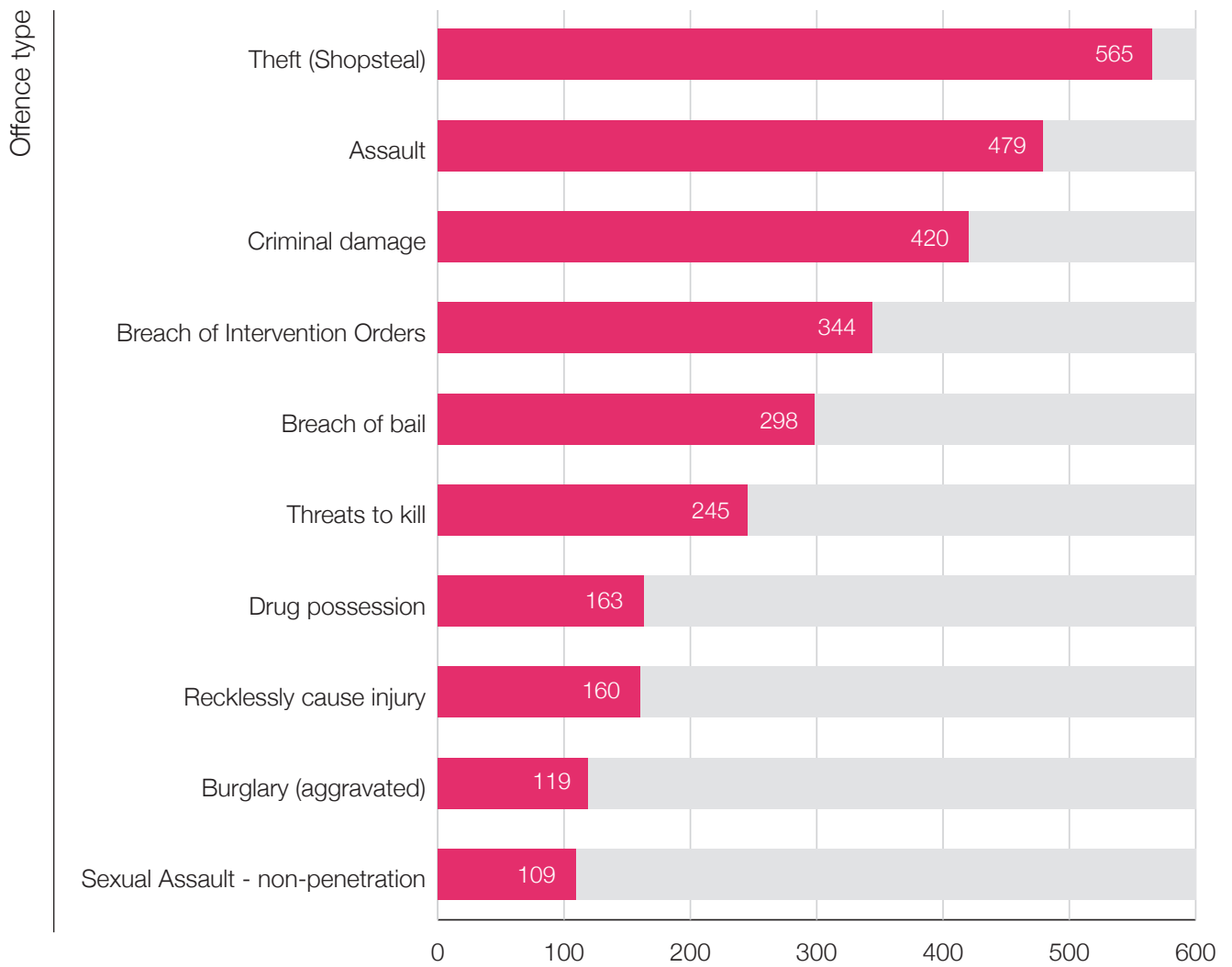
This year, 55 offence types were recorded by ITPs, up from 51 last year. The top two offences for alleged offenders were theft ('shopsteal') followed by assault, identical to last year.

There was a substantial increase in breaches of intervention orders in interviews attended by ITPs with 365 this year compared to 135 last year. This is a 170 per cent increase in interviews related to IVO breaches. Family violence and bail breach interviews also increased substantially and were among the top 15 offences this year.

In the victim interviews attended, 60 per cent related to sexual assault including child sexual assault and sexual offences, which was similar to last year (61 per cent).

There was a substantial decrease in interviews with victims of assault (16 per cent this year compared to 29 per cent last year).

## Alleged offenders



**Figure 8.** Top ten offences for ITP interviews with alleged offenders, 18/19

## Victims and witnesses

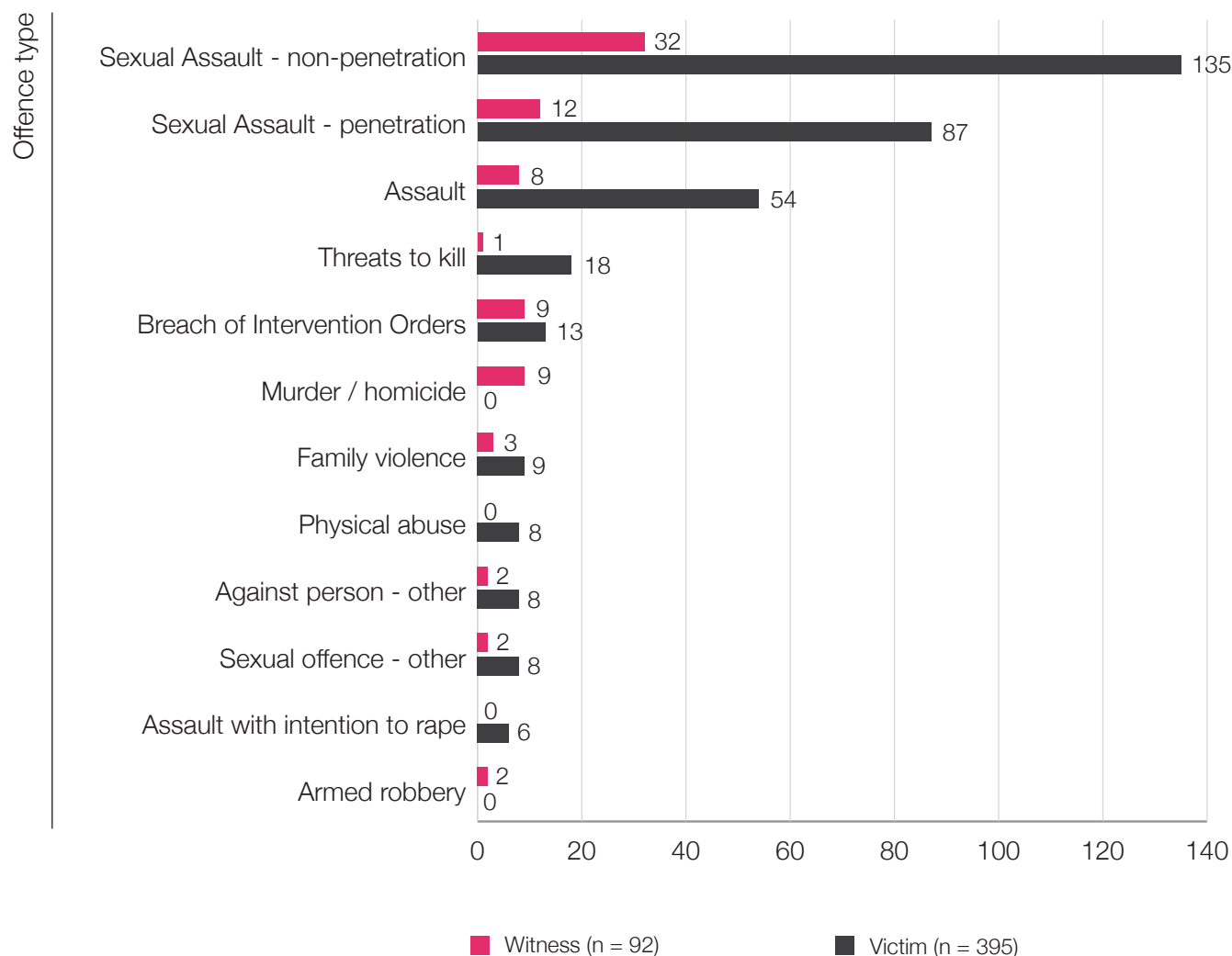


Figure 9. Top ten offences for victim and witness ITP interviews, 18/19

## Challenges

There is an increasing demand for ITPs, with about 10 per cent of requests this year unable to be allocated. The main stations affected were Geelong, Shepparton, Morwell and Horsham regionally; and Sunshine, Moorabbin, Werribee and Melton in metropolitan Melbourne.

The pressure on the program is exacerbated by the increasing complexity of matters often necessitating debriefing by program staff of volunteers following particularly difficult or traumatic interviews.

The program continues to experience a growing number of volunteers being requested to make a police statement and subpoenaed or summoned to court. The number of summonses and statements increased from four last year to eight this year. This often occurs quite some time after the initial interview, with one court hearing being heard three years after the interview.

The program devotes a significant amount of staff time to support volunteers through this process.

# In prison

## Prisoners with disability

Corrections Independent Support Officers (CISOs) are drawn from OPA's experienced ITP volunteers to provide assistance and support to prisoners with a diagnosed intellectual disability during Governors' Disciplinary Hearings at all adult prisons in Victoria.

CISO volunteers explain to prisoners their rights, check that they understand them and are freely able to exercise them throughout the process.

During the year, CISOs were asked to attend 299 hearings in ten of Victoria's 13 prisons and assisted 164 clients.

Clients ranged from 18 to 65 years of age, but with 80 per cent under 36 years of age.

Clients identifying as Aboriginal comprised 27 per cent of assisted people.

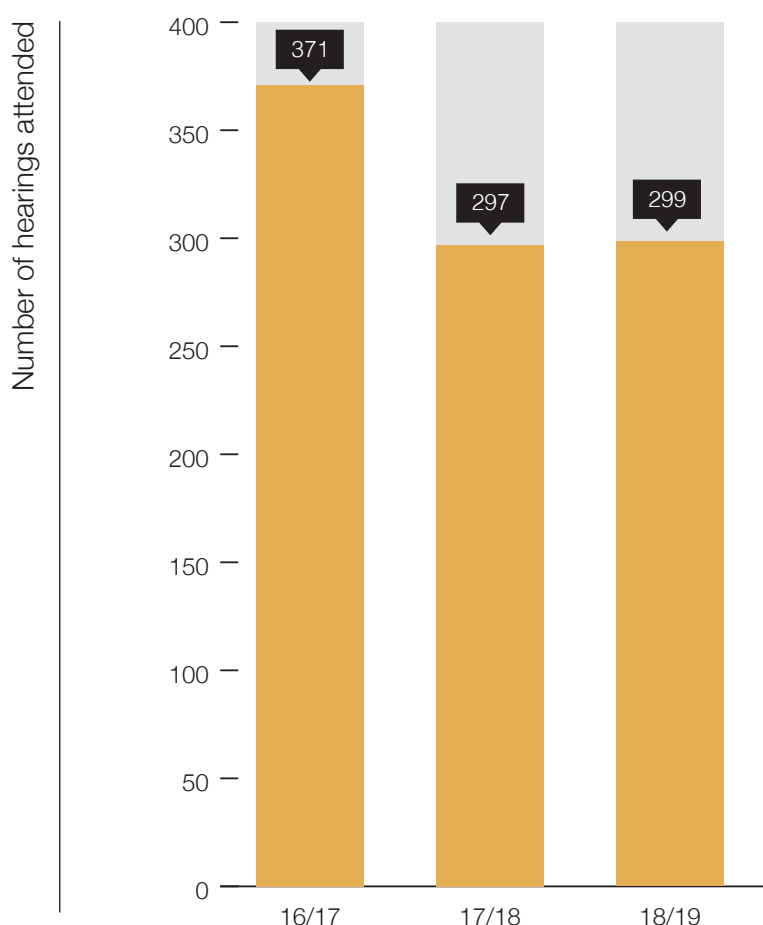


Figure 10. CISO hearings, 16/17 - 18/19

**Table 18. Location of CISO hearings, 18/19**

Location	Number of hearings
Dame Phyllis Frost Centre	1
Hopkins Correctional	1
Karreenga Correctional Centre	1
Loddon Prison	1
Ravenhall Correctional Centre	1
Ararat Prison	2
Barwon Prison	5
Melbourne Assessment Prison	12
Metropolitan Remand Centre	119
Port Phillip Prison	156
<b>Total</b>	<b>299</b>

This year's hearings involved 475 charges (across 164 clients) with almost 88 per cent of prisoners pleading guilty in 299 hearings.

Prisoners were found not guilty, or charges were dismissed, in 3.5 per cent of cases. A fine was the most common penalty (46 per cent), with a reprimand the next at 24 per cent, followed by withdrawal of privileges and restitution.

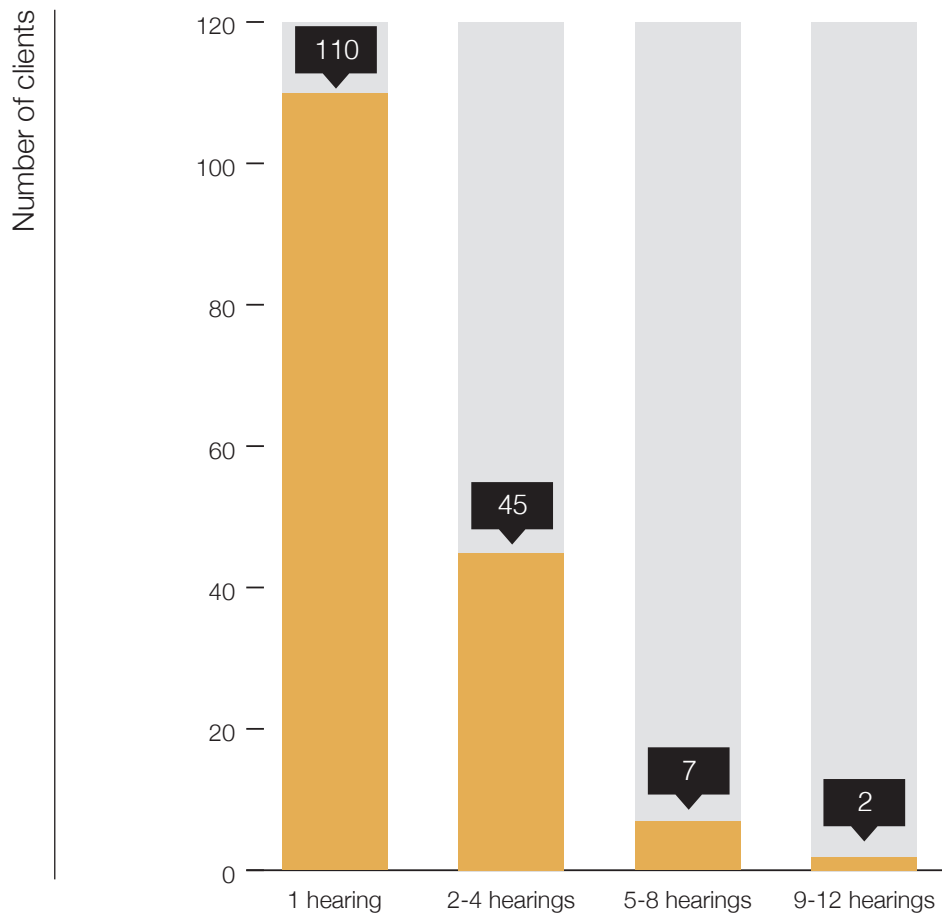
For nine hearings, the penalty was time served while one resulted in reclassification of the prisoner and in only three hearings were the charges dismissed.

Disappointingly, five out of 13 prisons where CISOs attend only utilised the service once in the year. This included the main women's prison, the Dame Phyllis Frost Centre, which has an operational capacity of 512 prisoners.

Ararat with an operational capacity of 790, only utilised a CISO twice and Barwon, with an operational capacity of 478 as at 30 June 2018, only five times.

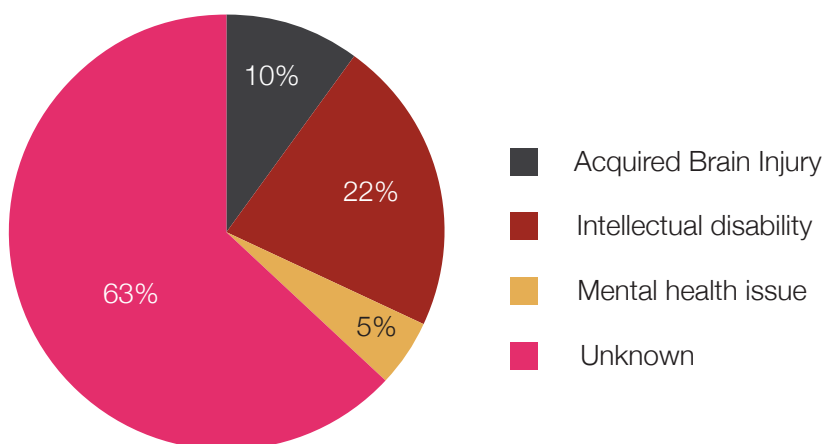
Corrections Victoria does not collect information on a prisoner's disability on admission, though it is possible that some ten per cent of Victorian prisoners have an intellectual disability based on national research figures of 2013.





**Figure 11.** Number of hearings per CISO client, 18/19

The figure below shows that, while only prisoners with an intellectual disability are eligible for the service, some clients presented with multiple disabilities including an intellectual disability.



**Figure 12.** CISO clients by disability, 18/19

# Engagement

## Advising, informing and educating

### Engaging with CALD communities

A translation and engagement project conducted during the year aimed to produce high quality, relevant and appropriately translated content for culturally and linguistically diverse communities including recent changes to medical treatment decision making laws.

The project involved the creation of three facts sheets in 17 languages on guardianship and administration, enduring powers of attorney and decisions about medical treatment.

To ensure the information was translated appropriately, consumer testing was undertaken with relevant ethno-specific organisations such as CO AS IT (Italian), Pronia (Greek) and the Filipino Community Council of Victoria.

### Your voice – Trust your choice project

In 2018, OPA was commissioned by DHHS and the Commissioner for Senior Victorians to undertake the Your voice – Trust your choice education project.

The project aimed to build the capacity of community members and workers who engage with senior Victorians to provide education sessions and information about making enduring powers of attorney in a way that minimises the risk of elder abuse.

Key outcomes for this project included:

- 211 participants attended 12 workshops
- 90 per cent of attendees reported that, following the workshop, they felt confident to educate others about what they had learned.

### Joint project with Reinforce Self-Advocacy

During the year, OPA commenced a joint project with the Reinforce Self Advocacy group that was funded by the Victoria Law Foundation.

The project aims to increase the knowledge that health practitioners and people with intellectual disability have of people's right to make their own medical treatment decisions with appropriate support. OPA and Reinforce Self-Advocacy will produce two fact sheets that will include the voice of people with intellectual disability through personal stories.

### NDIS

With the roll-out of the NDIS proceeding in Victoria, demand for advice and information on the scheme has intensified with the Advice Service experiencing a substantial increase in the number of enquiries compared to last year.

This year the Advice Service recorded 246 enquiries in relation to the NDIS compared with 31 last year, a sevenfold increase.

Many of the enquiries relate to:

- accessibility, including eligibility and plans
- inappropriate or insufficient plan inclusions
- consent issues (who can sign on behalf of a participant if they have a decision-making disability)
- the lengthy wait times for appeals and reviews
- requests for individual advocacy and the need for guardianship.

OPA anticipates that, with continuing and increasing demand during the implementation of the scheme, this topic will be a continuing source of enquiries.

It is not known, however, what impact the NDIS Quality and Safeguards Commission, which commenced operations from 1 July 2019, will have on the volume and type of enquiries the Advice Service receives.

### Short-term advocacy

The Advice Service provided short-term advocacy in 12 matters, generally relating to service or communication issues for a person with a disability.

Usually, short-term advocacy matters involve an intervention-type approach, which may

include follow-up phone calls to clarify or obtain further information on behalf of the person with a disability.

### Advice and information

This year the service provided:

- 13,644 instances of advice to callers, a 16 per cent increase over last year
- 91 per cent of advice through phone contact, with 7.5 per cent of enquiries via email.

The majority of callers to the Advice Service (85 per cent) were provided with information, 7 per cent were referred to an external organisation and 4.5 per cent were referred to the Community Visitors Program.

**Table 19. Instances of advice provided by the Advice Service, 14/15 - 18/19**

Year	14/15	15/16	16/17	17/18	18/19
Number	11,970	13,960	11,728	11,751	13,644

Caller patterns remain consistent with previous years. The majority of callers are from family and friends of people with disability, 39 per cent, followed by professionals from the health and community sectors and government agencies (31 per cent).

The next largest group is those calling on their own behalf (16 per cent).

In keeping with the pattern since the introduction of the *Powers of Attorney Act 2014*, most calls this year related to powers of attorney (including non-enduring powers of attorney and supported decision-making, 28.7 per cent) followed by guardianship and

administration (24.5 per cent). The other significant category of calls relates to medical consent, healthcare treatment, advance care planning, and end-of-life issues (17 per cent).

One or more forms of abuse were the concern of 1 169 enquiries, or 9.3 per cent of all enquiries, which is consistent with previous years.

**Table 20. Advice Service calls by abuse issue type, 18/19**

Abuse by issue type	Number	Percentage
Financial abuse	551	47%
Neglect	418	36%
Other abuse	665	57%
<b>Total</b>	<b>1634</b>	<b>140%</b>

(Note: Due to more than one type of abuse possibly being recorded within the same enquiry, the percentage adds up to more than 100 per cent. 'Other abuse' includes psychological, physical, sexual, impairment related, other.)

## Case study - Advice, information and education

### Amelia

A group home supervisor contacted the Advice Service to discuss her concerns for a resident, Amelia, 50, who has an intellectual disability.

The supervisor advised that Amelia's older brother had recently taken her out of the group home for a ten-day holiday. The house supervisor reported the brother had often taken Amelia on holidays but that his behaviour towards her was irrational, volatile and verbally abusive.

Days later, Amelia returned to the group home ahead of her scheduled return, having made her own way back using public transport. The supervisor reported Amelia had bruises on her arms and face and was anxious and upset. Victoria Police was contacted and were investigating the matter.

Amelia told the supervisor her brother had not taken her on the holiday as planned but, instead, drove her to another group home. Amelia's brother had also removed some of her personal items including clothing and a radio and taken them to the other group home without the supervisor's knowledge.

The supervisor contacted the other group home and was advised that Amelia had been allegedly assaulted by her brother.

The supervisor informed the Advice Service that an appointment with a GP had been made for Amelia for later that week. The supervisor was concerned that her brother would return to remove her again. The Advice Service then advised she should not be removed if she did not wish to go and where there was no authority.

The Advice Service advised the supervisor that a request for a visit from OPA's Community Visitors Program, whose role it is to report on the well-being of residents and advocate for their rights, would be made.

The Advice Service also completed a notification to the Public Advocate to alert her.

In the meantime, an application to VCAT was also made for the appointment of a guardian for Amelia. At the hearing at VCAT, OPA was appointed to investigate the matter and provide further information to VCAT about the need for the appointment.

## Community Education Program

OPA staff present information to both professional and community audiences on topics including OPA's services, substitute and supported decision-making, guardianship and administration, medical treatment decision making and advance care planning.

This year, the program delivered 167 presentations to a total audience of 4600, a 21 per cent increase in sessions over last year.

As in previous years, the majority of education sessions were provided to professionals (61 per cent), with 39 per cent of sessions delivered to members of the general public including tertiary students.

This year, in keeping with OPA's Cultural Diversity Plan, engagement with CALD communities and service providers was a priority and 25 community education sessions were delivered to these communities.

OPA also continued to offer monthly information sessions and introduced a new Practice Matters session, a bi-monthly interactive workshop for professionals with the aim of exploring their work practices and the human rights of people with disability.

OPA also provided tailored community education sessions during Law Week, Cultural Diversity Week, World Elder Abuse Awareness Day and other important events throughout the year.

OPA also participated in the VALID - Having a Say Conference, hosting an information stall and facilitating a workshop for both professionals and the general community.



# Communicating

## Publications

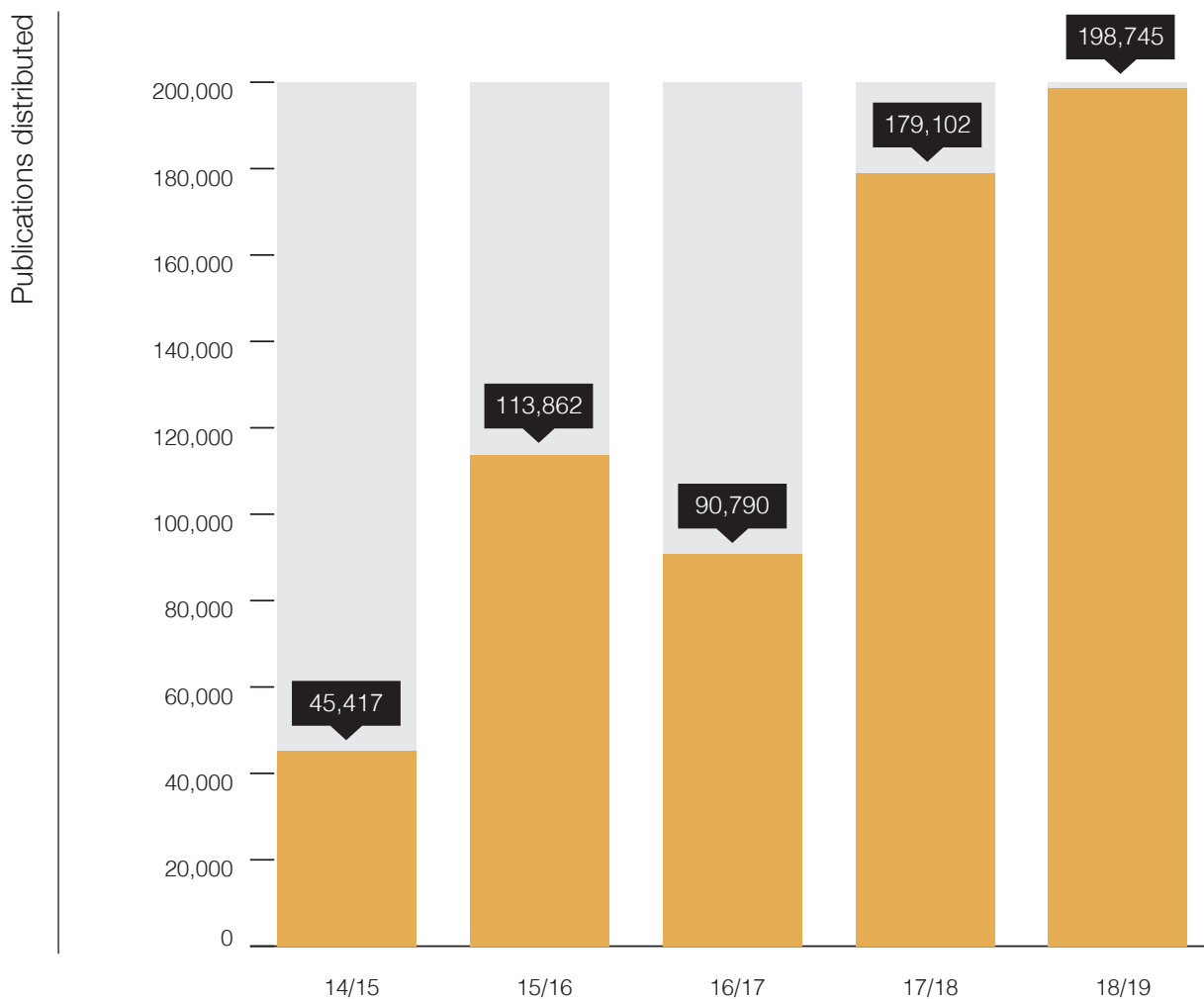
This year, the Communications Unit managed 95 print and online publications (compared to 40 five years ago).

These included information guides, fact sheets, brochures, forms, posters and an app.

A significant number of additional fact sheets and other resources were produced to assist medical treatment decision makers and health

practitioners understand their obligations when a person lacks decision-making capacity to consent to, or refuse, specific medical treatment.

In addition, OPA produced a new suite of fact sheets about planning for the future in 17 community languages.



**Figure 13.** Number of publications distributed, 14/15 - 18/19

The number of OPA publications distributed by OPA's distribution partner Victoria Legal Aid is up 11 per cent on last year and has increased by 337.6 per cent over the past five years.

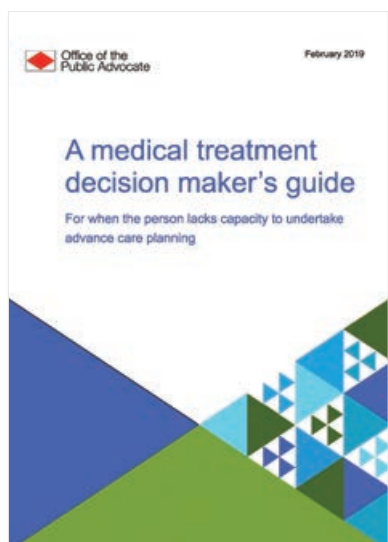
While the increased demand for OPA resources is gratifying, it has come at a significant financial cost to both OPA and VLA. OPA publications represent 45 per cent of all publications distributed by VLA. The agency has advised that, from January 2020, it will charge OPA a per item distribution fee to recover part of the cost of the service.

Based on this year's volume (198,745) and per item distribution fee, this would add an additional \$70,355.73 to the cost of providing print publications. OPA is, thus, reviewing its hard copy suite.

The most in-demand publications requested were:

- *Take Control*, (86,530)
- *Your voice – Trust your choice: Tips for seniors making enduring powers of attorney* (23,214)
- making an advance care directive (20,048)
- making an enduring power of attorney (17,482)
- brochures relating to appointing a medical treatment decision maker (8439)
- *Abuse is not OK* Easy English card (5493).

OPA's communications around powers of attorney are also being reviewed to put an



increased focus on the process of future planning rather than form-filling, particularly in relation to OPA's flagship resource *Take Control* which has experienced an almost doubling of demand over the past five years, due

largely to orders from Victorian hospitals and aged care facilities.

A new monthly stakeholder newsletter *OPA Updates*, produced with accessible software, grew to 239 subscribers over six months. It enables OPA to provide timely updates on new information and resources, promote education events and support advocacy.

Following feedback from health practitioners, the 'Can your adult patient consent?' flowchart and app for health practitioners was updated. The app has now been downloaded onto 612 devices and is being promoted by key stakeholders, particularly junior doctors and medical students.

## Online

Most visits to the OPA website related to either powers of attorney or medical treatment decision-making.

In line with the Victorian Government's Digital First Strategy, all OPA publications are now available online. This year, website reporting enhancements showed that 91,361 documents were downloaded including:

- 17,542 enduring power of attorney appointment forms (short form)
- 11,309 enduring power of attorney appointment forms (long form)
- 7865 *Take Control* (which includes the enduring power of attorney forms).

## Accessibility

OPA's website continues to meet the WCAG 2.0 AA accessibility standard for government websites.

New content is presented in an accessible format, such as a text document or HTML, as well as in PDF format, and an increasing number of documents are available in Easy English.

## Media

This year, OPA issued 28 media releases, all of which were featured on the OPA website. Sixteen stories were picked up by the media, including OPA's *Illusion of 'Choice and Control'* report which generated significant comment on social media as well as in traditional media. OPA's volunteers also featured in many articles in local and regional outlets, supporting volunteer recruitment efforts with free media.

Nine media covered the Public Advocate speaking out on the serious issue of ongoing sexual assault in mental health units. Pleasingly, shortly after, the Victorian government announced, as part of its election promises, a Royal Commission into Victoria's mental health system which will be able to investigate this issue.

The Public Advocate also contributed commentary to an innovative web series produced by Women with Disabilities Victoria on family violence.

Six articles about OPA featured on the home page of J-info throughout the year. OPA's resources and information were also promoted via newsletters of key stakeholders including Carers Victoria, Victoria Legal Aid and DARU.



# Diverse groups

## Disability Action

In the third year of its operation, under section 38 of the Disability Act, OPA's *Disability Action Plan 2016-2018* (DAP) met its legislative requirements.

It did so by including actions that reduced access barriers, encouraged employment and promoted inclusion and participation of people with disability, and promoted positive attitudes towards people with disability.

All actions in the plan remained either in progress or on track, meeting targets.

Highlights of the year included the opportunity to provide a short-term, paid position for an unemployed person with a disability.

## Cultural Diversity

In the third year of its operation, under the *Charter of Human Rights and Responsibilities Act 2006* and the *Multicultural Victoria Act 2011*, OPA's *Cultural Diversity Plan 2016-2018* (CALD) met its legislative requirements.

Key achievements included identifying and responding to barriers facing culturally diverse communities and building strong relationships with ethno-specific organisations, organisations providing services to CALD communities, the Ethnic Communities Council of Victoria, including consulting with it in developing education programs and resources.

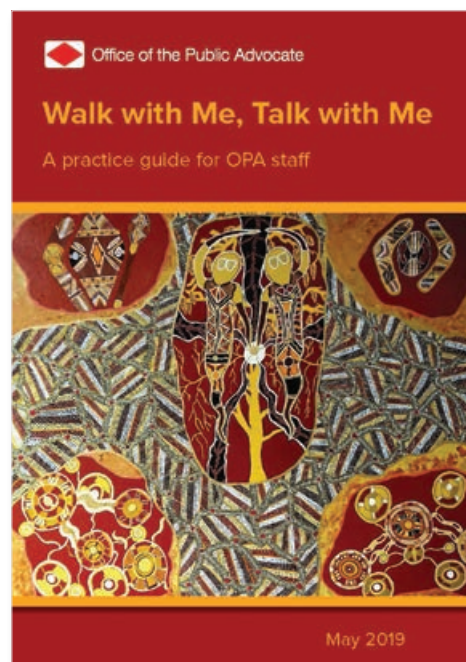
OPA also produced a more ambitious *Cultural Diversity Plan 2019-2022* including a commitment to undertake a second cultural competence review and offer cultural-awareness training sessions to OPA staff and volunteers.

## Koori Inclusion

This year, OPA achieved a key goal of its *Koori Inclusion Action Plan 2017-2019* with the development and release of an Aboriginal practice guide for staff and volunteers, launched by the chair of the Koorie Heritage Trust, Ian Hamm, a Yorta Yorta man.

*Walk with Me, Talk with Me* is believed to be the first Aboriginal practice guide produced in Victoria and interest has been shown in it from other states and territories.

Other achievements included offering staff and volunteers cultural competency training delivered by the Koorie Heritage Trust, celebrating NAIDOC week, Reconciliation Week and marking Sorry Day.



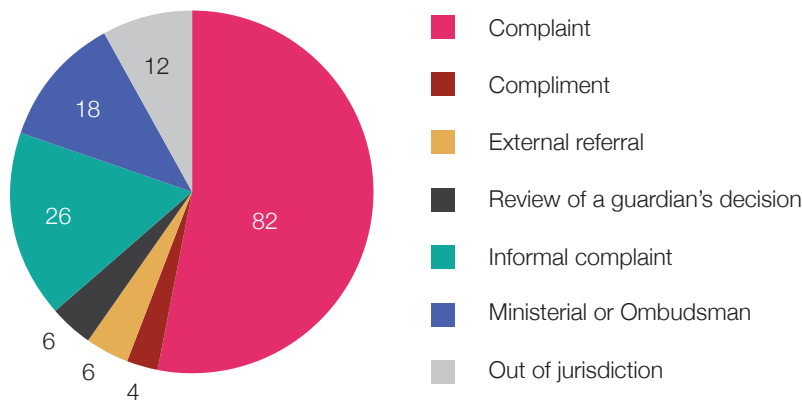
## Gender Equity and LGBTIQ

This year, OPA formed two committees with the aim of identifying issues and developing a Gender Equity Plan and LGBTIQ Plan to be released next year.

# Feedback and complaints

During the year, OPA received 154 instances of feedback/complaints which included formal complaints, informal complaints, requests for reviews of a guardian's decision, compliments, Ministerial or Ombudsman enquiries and referrals from external agencies.

It was an increase of 52 per cent over last year.



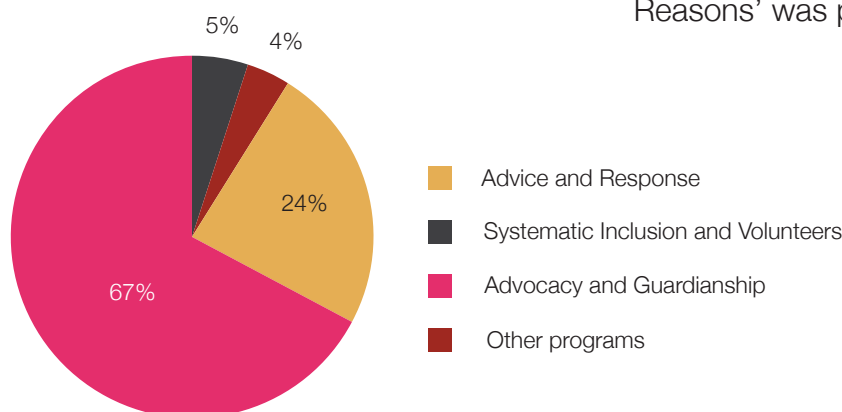
**Figure 14.** Feedback/complaints by type, 18/19

There were 82 formal complaints with 67 per cent (or 55 complaints) related to the work of the Advocacy and Guardianship Program. This was up from 31 formal complaints last year.

The majority related to how staff communicate (31 per cent), or concerned accommodation decisions (20 per cent) and decisions about access to the person under guardianship (18 per cent).

A number of complaints were also from complainants demonstrating unreasonable conduct.

As last year, there were six requests for a review of a guardian's decision. Five involved accommodation decisions and, in all cases, the guardian's decision was sustained. The other request involved a decision in regard to 'access to the represented person' and this was not continued after a 'Statement of Reasons' was provided to the complainant.



**Figure 15.** Formal complaints by OPA program area, 18/19

Twenty-four complaints concerned the Advice and Response Program which includes the Advice Service, the Investigations team and the Medical Decisions team.

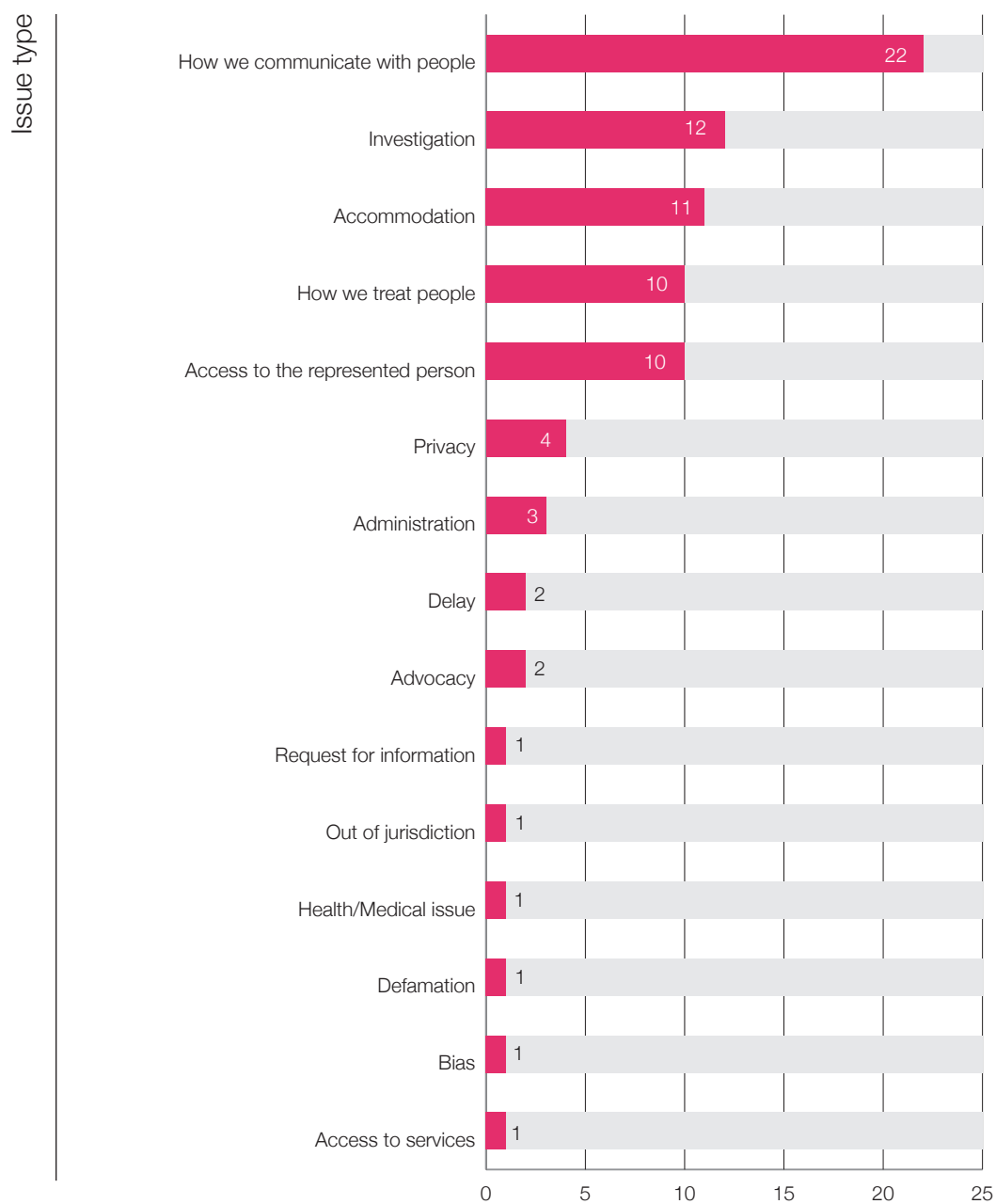
Three complaints involved the Safeguarding, Inclusion and Volunteers Program with the remaining two relating to other programs.

Overall, how staff communicate with people was the main focus of formal complaints (27 per cent), followed by investigations (15 per cent), decisions concerning accommodation

(14 per cent), access to the represented person (12 per cent) and how staff treat people (12 per cent).

As regards communication complaints, most involved complainants who were unsure about the role of OPA staff members or volunteers; these issues were resolved by explanation.

Other complaints were the manner of communication or a perception of inadequate communication from OPA staff.



**Figure 16.** Formal complaints by issue type, 18/19

Of informal complaints, 26 were referred to the program areas for early resolution, one fewer than last year.

There was an eight per cent increase in Ministerial and Ombudsman enquiries (from 14 last year to 26 this year). When responding to complaints, all complainants are now referred to the Victorian Ombudsman if they are unsatisfied with the outcome, so this may have contributed to the increase.

Feedback and complaints are useful for improving OPA's services. Although there were only four complaints that related to privacy, all programs are reviewing their current Standard Operating Procedures to ensure it's privacy and data protection information is accurate and up-to-date and provides guidance to staff, particularly on the release of personal or health information.

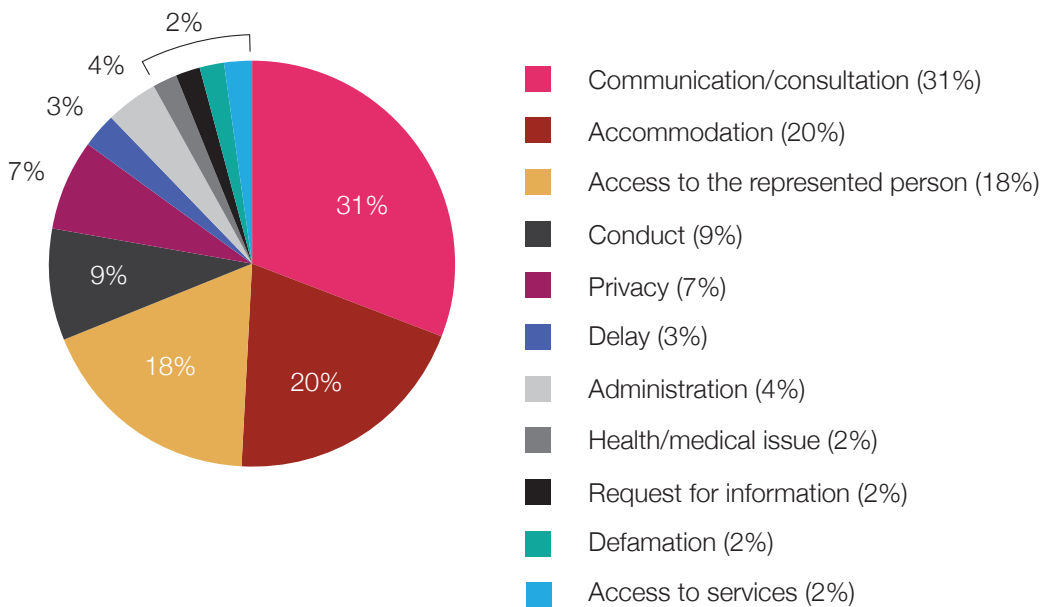


Figure 17. Advocate Guardian Program issues, 18/19

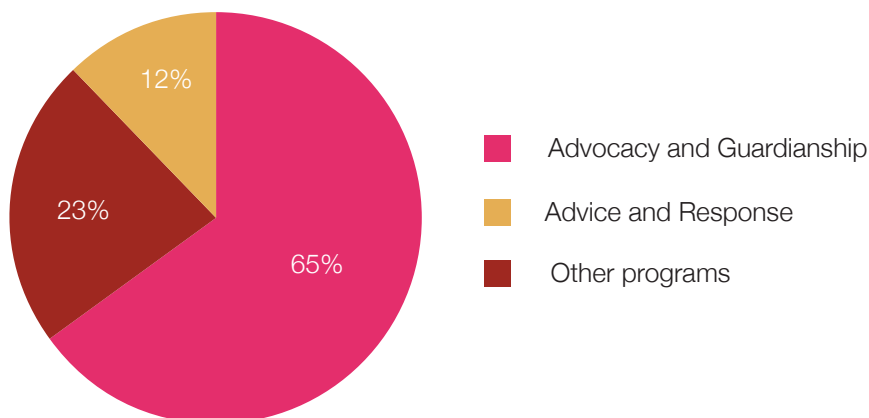


Figure 18. Informal complaints, 18/19

# Forums

## Disability and the criminal justice system

OPA co-hosted a forum, 'Disabling Justice: Why the system fails people with disability and mental illness', with the Future Social Service Institute, a partnership between the Victorian Council of Social Services and RMIT.

The objective of the forum was to commence the conversation about the issue of the care of Victorians with a disability and mental illness in prison.

Chaired by the Public Advocate, the panel featured disability rights campaigner, Justen Thomas, speaking on his experience and lessons learned as a person with a disability in the criminal justice system; the Victorian Ombudsman, Deborah Glass OBE, who discussed her report, 'Investigation into the imprisonment of a woman found unfit to stand trial'; and RMIT University's Centre for Innovative Justice Director, Rob Hulls, on therapeutic justice.

Panelists at the forum called on the audience to make submissions to the Royal Commission into Victoria's mental health system, and the Royal Commission into violence and abuse of people with disability.

## Violence and abuse in disability care

In conjunction with the Future Social Service Institute, OPA hosted a second forum this year. The topic was 'No Excuses: Preventing and responding to violence in disability care'. It canvassed safeguarding arrangements to protect NDIS participants with disability from violence and abuse.

The forum was moderated by the Public Advocate, and featured Aboriginal self-advocate Jane Rosengrave, a survivor of institutional abuse; Federal Disability Discrimination Commissioner, Alastair McEwin; and inaugural NDIS Quality and Safeguarding Commissioner, Graham Head.

OPA is undertaking further research on the issue of violence in group homes and, in June, partnered with VALID to host a consultation on violence in group homes.



*Disabling Justice Forum panel from left: Public Advocate, Colleen Pearce, disability rights campaigner, Justen Thomas, Ombudsman Victoria Moderator, Deborah Glass OBE, and RMIT University Director Centre for Innovative Justice, Rob Hulls.*

# Appendices

## Workforce data

In addition to the Public Advocate, OPA's workforce data is as follows:

**Table 21. Paid employees at 30 June 2019**

OPA employees by gender and age			Employment status			
Gender	Total	Age range	Ongoing	Fixed term	Casual	Grand total
Male	28	Under 25	0	1		1
Female	83	25-34	10	6		16
		35-44	14	4		18
		45-54	27	7	1	35
		55-64	31	3	1	35
		Over 64	4		2	6
<b>Grand total</b>	<b>111</b>		<b>86</b>	<b>21</b>	<b>4</b>	<b>111</b>

**Table 22. Paid staff**

OPA employees by VPS level and gender			
Classification	Male	Female	Total
VPS 2		11	11
VPS 3	2	11	13
VPS 4	1	9	10
VPS 5	19	49	68
VPS 6	4	2	6
Executives	1		1
Legal Officers	1	1	2
<b>Grand total</b>	<b>28</b>	<b>83</b>	<b>111</b>

**Table 23. Paid FTE**

Full-time equivalent employees			
Classification	Male	Female	Total
VPS 2		9.5	9.5
VPS 3	2.0	9.0	11.0
VPS 4	1.0	7.9	8.9
VPS 5	18.1	43.7	61.8
VPS 6	4.0	2.0	6.0
Executives	1.0		1.0
Legal Officers	1.0	0.7	1.7
<b>Grand total</b>	<b>27.1</b>	<b>72.8</b>	<b>99.9</b>

# Financial report

Comprehensive operating statement for the financial year ended 30 June 2019

<b>Table 24. Continuing operations</b>	<b>Note</b>	<b>2019 \$000's</b>	<b>2018 \$000's</b>
<b>Income from transactions</b>			
Output appropriation		10,895	9971
Grants	1	2345	2528
Other income	2	273	191
<b>Total income from transactions</b>		<b>13,513</b>	<b>12,690</b>
<b>Expenses from transactions</b>			
Employee expenses	3	10,991	9421
Depreciation and amortisation		83	81
Interest expense		8	9
Grants and other transfers		5	5
Supplies and services	4	3046	2728
<b>Total expenses from transactions</b>		<b>14,133</b>	<b>12,244</b>
<b>Net result from transactions (net operating balance)</b>		<b>(620)</b>	<b>446</b>
<b>Other economic flows included in net result</b>			
Other gains (losses) from other economic flows	5	(4)	31
<b>Total other economic flows included in net result</b>		<b>(4)</b>	<b>31</b>
<b>Net result</b>		<b>(624)</b>	<b>477</b>

**Note 1:** Reduction in grants reflects reduced additional non-recurrent funding provided by the Department of Health and Human Services to support the operation of quality and safeguards arrangements during transition to the National Disability Insurance Scheme.

**Note 2:** The increased funding reflects continuation of three health services (Monash, Eastern and Alfred) and the addition of Northern and Western Health funding provision of additional guardianship services in the hospitals.

**Note 3:** Growth reflects new fixed term appointments relating to two-year funding for expanded guardianship and investigation services and additional resourcing for Independent Third Person program.

**Note 4:** Cost increases relate to additional travel and accommodation, implementation of new and update of existing data bases and purchase of IT equipment.

**Note 5:** This reflects an adjustment to the provision for long service leave during 2018-19. This is a non-budget adjustment and has no impact on OPA's annual appropriation budget.

# Compliance and accountability

## Decision-making and advocacy

OPA makes decisions and advocates for people with disabilities. It has obligations under, and must comply with, the following statutes:

- *Guardianship and Administration Act 1986*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Medical Treatment Planning and Decisions Act 2016*
- *Carers Recognition Act 2012*
- *Severe Substance Dependence Treatment Act 2010.*

## Information management

OPA is exempt from the operation of the *Freedom of Information Act 1982*.

OPA and its volunteers have obligations under, and must comply with, the following statutes in relation to the management of personal and confidential information:

- *Guardianship and Administration Act 1986*
- *Victorian Civil and Administrative Tribunal Act 1998*
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*
- *Disability Act 2006*
- *Mental Health Act 2014*
- *Supported Residential Services (Private Proprietors) Act 2010*
- *Public Records Act 1973*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Public Administration Act 2004*
- *National Disability Insurance Scheme Act 2013 (Cwlth).*

## Disclosure of improper conduct

The purpose of the *Protected Disclosure Act 2012* is to encourage and facilitate the making of disclosures of improper conduct within public bodies and establish a system for matters to be investigated.

OPA is not able to receive disclosures under this Act, however, it does have an obligation to provide welfare to persons making protected disclosures.

Information about making protected disclosures, and OPA's role, is on the OPA website.



# Committees

## External committees and advisory groups on which OPA was represented

### Advisory groups:

- Project Steering Committee for the Integrated Model of Care for Responding to Suspected Elder Abuse (DHHS)
- Seniors Rights Victoria Advisory Committee
- Elder Abuse Advisory Group (DHHS)
- Human Rights Committee of the Supreme Court Senior Masters Office
- Clinical Working Group on Parents with a Disability, Beneficiaries Advisory Group
- Human Rights Committee of the Supreme Court Masters Office
- Elder Abuse Roundtable
- Law Institute of Victoria
  - Elder Law Committee
  - Disability Law Committee
  - Administrative Law and Human Rights Committee
  - Health Law Committee
- Victoria Police Disability Portfolio Reference Group
- Victoria Police Mental Health Portfolio Reference Group
- Victoria Police Seniors Portfolio Reference Group
- Victoria Police Human Rights Reference Group
- Victorian Electoral Commission Disability Action Plan Advisory Committee
- Consumer law and people with cognitive impairment research group, Melbourne Social Equity Institute, University of Melbourne
- Balit Narrum
- VALID Steps to Speaking Up Project, Steering Committee Stage 2
- Judging Panel, 2019 Victorian Disability Awards
- Disability Action Plan Committee, VCAT
- Diversity and Inclusion Community of Practice, Victorian Public Service Enablers Network
- Disability Act Advisory Group, Victorian Government
- Office of the Public Advocate and Reinforce Steering Committee, The Right of People to Make their own Medical Decision project
- Community Advisory Committee, Royal Children's Hospital
- Victorian Advance Care Planning Advisory Group
- Participants with Complex Needs NDIS Implementation Taskforce
- Colanda Community Consultation working group
- NDIS Implementation Taskforce – Participant Needs and Mainstream Interface working group, DHHS
- Women with Disability Victoria Safeguards Reference Group
- Safer Care Victoria, Mental Health Insight Subcommittee.

## Internal committees

- Operations
- Strategy
- Consultative
- Serious case review
- Mortality review
- Ethics
- Wellbeing
- Education and Training
- Koori Inclusion Action Plan
- Disability Action Plan
- Cultural diversity
- LGBTIQ
- Gender equity

# Public Advocate Awards

## Public Advocate's Award

This year, the Victorian Public Advocate, Colleen Pearce recognised the outstanding achievements of the Australian Federation of Disability Organisations (AFDO) in effecting positive change through strong advocacy for the rights of people with disability.

This Award was in recognition of AFDO's role in fearlessly taking on major systemic issues that impact on the human rights of people with disability, including speaking out on:

- the continuing violence, abuse and neglect of people with disability
- access to justice for people with disability
- accessing the NDIS
- health issues.



The Public Advocate's Art Prize was awarded to David White for his artwork 'Who ate the popcorn?'

## Public Advocate's Art Prize

Each year, the Public Advocate supports artists with disability or mental illness by purchasing their artwork and awarding the Public Advocate's Art Prize.

The prize is presented at State Trustee's annual CONNECTED art exhibition, which encourages emerging artists with disability or mental illness to present their work publicly.

This year's Public Advocate's Art Prize went to David White for his painting, *Who ate the popcorn?* (Pictured below).

David said he had submitted the artwork so that people can look at it and understand that there are people in the painting who do not have a disability and they are supporting people with disability.

He believes this is what the world should look like and how people should act.

## Victoria Police

The Public Advocate recognised police members demonstrating outstanding service to people with disability at the Victoria Police International Day of People with Disability event on 3 December, 2018.

The ITP-nominated awards went to Knox Police Station and Shepparton Police Station for their support of the ITP program and commitment to ensuring people with a cognitive impairment were treated fairly and with respect and dignity.

The police-nominated award went to Judy Raku for her work supporting and mentoring a deaf colleague.

The community-nominated award went to Detective Senior Constable Griffith from the Kingston Crime Investigations Unit who determinedly pursued a case where a support worker took advantage of a client's vulnerability to misappropriate a very large amount of money from the client's bank account.

Special commendations were presented to:

- Melbourne Prosecutions Unit for their dedication to, and support of, the Assessment and Referral Court List, which aims to reduce the likelihood of people with a diagnosed mental illness or cognitive impairment re-offending by identifying and addressing the underlying causes of behaviours
- CFD Accounts Payable Department for their support, mentoring and pro-active participation in skill development programs for people with disability
- Inspector Russell Wynd for his role in coordinating The Law Enforcement Torch Run in support of the Special Olympics
- Detective Sergeant Tony Breen, the driving force behind the world-leading Sexual Offences and Child Abuse Investigations Course at the Victoria Police Academy
- Michelle Wareham, the former Disability Communities Portfolio Manager
- Constable Lachlan Smith, an active and vital member of the Law Enforcement Torch Run in support of the Special Olympics
- Leading Senior Constable Kevin McLaren, who volunteered his time to coach Access All Abilities basketball and raised and secured funds to help people with disability participate in the community.

### Ben Bodna Award

The Ben Bodna Award, named after Victoria's first Public Advocate, recognises exceptional leadership at Victoria Police in support of Victorians with a disability.

This year, the award was presented to Senior Constable Anthony Downing, who helped a Big Issue vendor with severe communication and physical disabilities to reduce his risk of being targeted by thieves by presenting him with a custom-made secure container for his wheelchair tray.



Senior Constable Anthony Downing with Big Issue vendor John, and his custom-made secure container for his wheelchair tray.

### AFDO Award



From left: AFDO Directors, Christine Hunter and Nick Rushworth, AFDO CEO, Ross Joyce, AFDO Vice President, Trevor Carroll, Public Advocate, Colleen Pearce, and AFDO Director, Felicity Crowther.



Office of the Public Advocate

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