Office of the
Public Advocate

Safeguarding the rights and
interests of people with disability

Annual Report

2017–18

Artist, George Aristovoulous

About the cover image

George Aristovoulous is an emerging artist who works predominantly with pencil on paper. His style exemplifies figurative abstraction, carefully segmenting the picture plane by creating broad linear stripes that often incorporate a figurative image.

This painting was exhibited at State Trustees annual CONNECTED exhibition 2017.

Case studies

The case studies used to illustrate important points in this report have been de-identified. Names are fictitious.

Office of the Public Advocate
Annual Report 2017–2018

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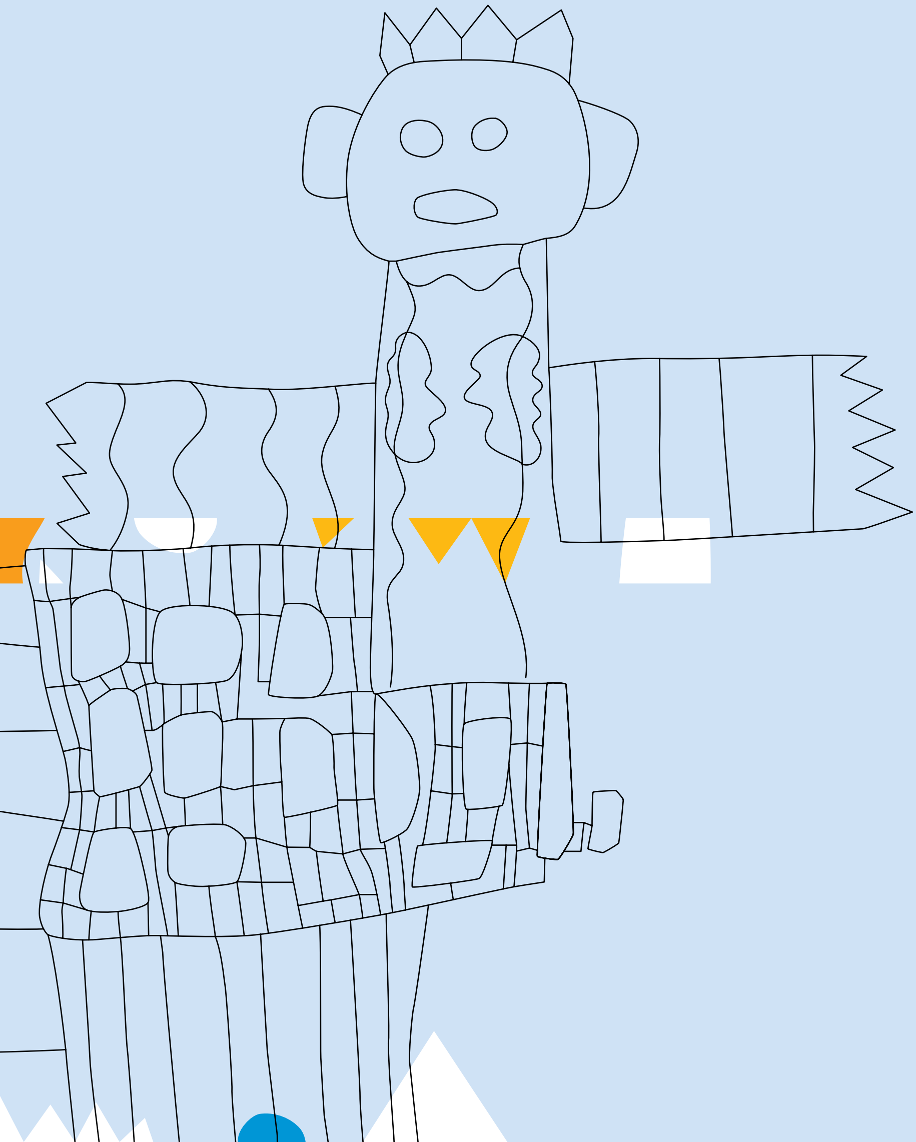

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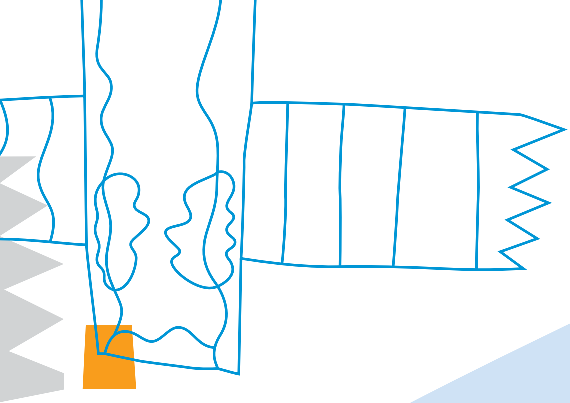


Our Vision

A just and inclusive society that respects and promotes the dignity and human rights of all people

Our Purpose

Safeguarding the rights and interests of people with disability and working to eliminate abuse, neglect and exploitation

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.

Message from the Public Advocate

OPA's mission – to uphold the rights and interests of people with a disability and work to eliminate abuse, neglect and exploitation – is based on a human rights framework.

A human rights approach guides the way staff and volunteers promote and protect the rights of people with disability, affirming the inherent worth of every individual. It holds that all people with disability have the right to enjoy equality of opportunity and to effectively participate in, and be fully included in, society.

In recent years OPA has experienced an unprecedented demand for all its services, particularly in guardianship and investigations. I acknowledge the State Government for supporting OPA to meet this demand through the very welcome significant budget boost of $5.4million over two years.

As the NDIS continues its steady roll out, the impact on OPA and the disability environment is becoming more apparent. The number of guardians with NDIS participants is increasing and this, combined with the complex nature of NDIS, has appreciably increased the workload of the guardians involved. The considerable number of service provider contracts developed, reviewed and signed continues to tax the resources of our legal team and staff.

The lack of a provider of last resort, compounded by the dearth of accommodation options for complex clients puts enormous pressure on the office for advocacy and guardianship. This often means a plethora of unsustainable short-term options for the individual and the almost impossible task of obtaining appropriate long-term solutions, leading to poor outcomes. For some, it means being kept for long periods of time in inappropriate settings such as hospitals and prisons because there is no suitable accommodation within the community.

In one case, a woman for whom OPA is guardian spent 18 months in prison on remand.

Following a referral from my office, the Ombudsman is currently investigating whether the woman's conditions in prison were humane, met her complex needs, whether appropriate steps were taken by authorities to find her more suitable accommodation and if the issues raised by this case are isolated or systemic. OPA welcomes this investigation.

Unfortunately, this is not an isolated case and OPA has had experience in a number of similar cases, all of which are deeply troubling.

The continuing roll out of the NDIS in Victoria has also had a considerable impact on the work of the office in other areas.

The future of the Disability Community Visitors Program remains uncertain. Community Visitors inquire, advocate and monitor facilities for people with disability and report on their care and treatment. For more than 30 years, they have been an essential component of Victoria's safeguards for people with disability, playing a crucial role in protecting their rights.

The Australian government's evaluation of community visitors programs around the nation has not yet commenced. I am concerned about the ability of Victoria's Community Visitors to visit accommodation facilities when the NDIS is fully implemented in this state in 12 months' time. It is imperative that the current level of safeguards in Victoria are guaranteed as a minimum and this includes maintaining the Community Visitors Program.

Community Visitors, however, have been heartened by the unequivocal support for the continuation of the program by the State Government and welcomed their commitment to strengthen safeguards across the disability sector during the transition to the NDIS.

The *Medical Treatment Planning and Decisions Act 2016* that came into force on 12 March this year moves from a 'best interests' model of medical treatment and instead promotes the 'values' and 'preferences' of patients.

OPA's Medical Decisions Team supports healthcare practitioners seeking consent for significant treatment

> OPA’s passionate and energetic staff tirelessly fight for the rights of Victorians with disability or mental illness.

Colleen Pearce presents the 2018 Public Advocate's Award to Amaze CEO Fiona Sharkie (left) and Amaze Chair Judy Brewer (right)

of patients who are unable to make their own decisions and who do not have a medical treatment decision maker. By the end of the year, the team had dealt with 159 applications for decisions resulting in 99 consents for significant medical treatment.

OPA also updated the powers of attorney guide, *Take Control*, to include the forms and instructions for appointing a medical treatment decision maker and making an advance care plan as well as making an enduring power of attorney. By 30 June, 75,000 copies of the current and previous edition had been distributed and more than 38,000 copies of power of attorney forms and *Take Control* were downloaded from the OPA website.

A further 26 OPA publications were updated or created, as well as a video and an app to assist healthcare decision-makers meet their new obligations under the Act.

During the year I was fortunate to meet the United Nation’s Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar, whose role is to support states to fulfil their obligations as outlined under the Convention on the Rights of Persons with Disabilities.

We spoke about the rights-enhancing role guardianship can play in ensuring people with disability obtain accommodation, access services, and are safe from abuse, neglect and exploitation. I also emphasised the importance of supported decision-making in enabling people with cognitive disability to exercise their legal decision-making rights.

My office has continued to work to prevent the mistreatment of older people, in many cases by a trusted family member or friend. OPA's work in helping prevent elder abuse was recognised when the office was contracted, on behalf of the Australian Guardianship and Administration Council (AGAC), by the Australian Attorney-General's Department to lead two national elder abuse projects.

The first project will develop a discussion paper about enduring appointment laws and practices throughout Australia, with a particular focus on enduring appointments with financial responsibilities. The misuse of enduring financial powers of attorney is one form of financial abuse experienced by a growing number of older people in our community, but the laws and protections available in each of the states and territories vary. The paper will inform the Council of Attorneys-General about the feasibility of developing generic forms and the possible future development of nationally consistent legislation for enduring appointments, with a view to reducing the misuse of these important documents.

The second project will see the development of a national 'best practice' resource for older people completing enduring appointments. The resource will provide practical national guidance on the use of enduring appointments, with a particular focus on how the documents can be used to prevent elder abuse.

With our ageing population, the incidence of abuse is sadly expected to rise, along with the associated harm to all aspects of so many lives. It is pleasing that OPA is able to contribute to the national response to prevent and respond to the abuse of older Australians in this way.

Last, but definitely not least, I acknowledge and sincerely thank OPA’s passionate and energetic volunteers who tirelessly fought for the rights of Victorians with disability or mental illness in 2018.

Like the very committed staff of the office, our volunteer army of 670 Victorians is passionate and dedicated and gives freely of precious personal time to work in facilities, group homes, supported accommodation, prison, police stations and the community.

The commitment of the staff and volunteers represents the best of the Victorian community and is why our state continues to be a leader in a wide range of human rights reforms for people with a disability.

Colleen Pearce

Colleen Pearce
Public Advocate

Advocacy and Adult Protection

Introduction

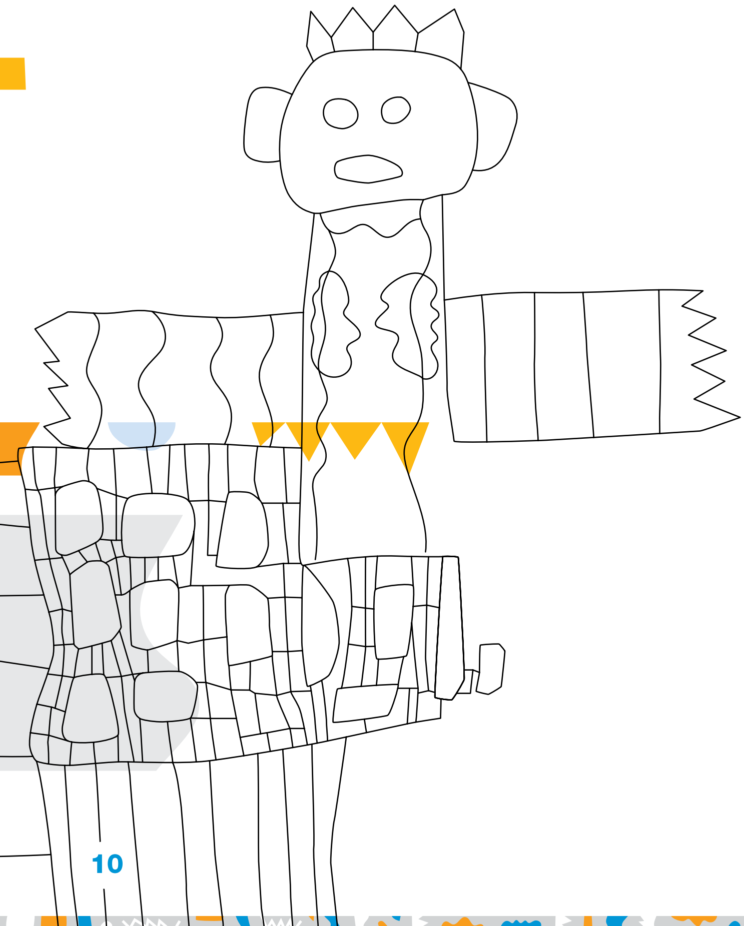
A number of operational programs in the office were reorganised this year under the general title of 'Advocacy and Adult Protection', but for ease and effective management, are managed under two groupings: Advocate Guardianship Protection, and Advice and Response.

Advice and Response includes the Advice and Education Service, the Medical Treatment Team and the Investigations Team.

These teams have different responsibilities but, as a whole, provide a comprehensive service across a wide spectrum.

The Advocate Guardian Program continues to provide the core services of guardianship and advocacy.

It handles all guardianship matters where the Public Advocate is appointed as guardian by VCAT.



Medical Decisions

Medical decision-making laws in Victoria changed on 12 March 2018 with the commencement of the *Medical Treatment Planning and Decisions Act 2014* (MTPD Act).

The new laws shift away from a 'best interests' model to promoting the values and preferences of patients and enabling people to have greater involvement in decisions concerning their medical treatment.

Under them, the Public Advocate's authority to make medical treatment decisions for Victorians (in certain circumstances) is such that a direct request to OPA from a health practitioner for a significant medical treatment decision can be made, rather than submitting an application to VCAT for a guardian to be appointed to make medical treatment decisions.

Victorians can now make an advance care directive, appoint a medical treatment decision maker and appoint a support person for their medical treatment decisions. The changes have had a significant impact on the work of OPA with extensive planning involving staff across most program areas.

The Medical Decisions Team at OPA was established in response to the new Act.

At this stage, it is a small team of three, but this may change as demand becomes clearer.

Initial contact is generally via the submission of an online form (available on the medical forms page of the OPA website). The forms relate to the sections of the new Act which give the Public Advocate the authority to make significant medical treatment decisions (section 63) or respond to a notification of a refusal of significant medical treatment by a medical treatment decision maker (section 62).

The team does not make routine or emergency medical treatment decisions.

It is also the contact point for health practitioners to forward a copy of a medical research practitioner's certificate (section 81).

Table 1. Number of applications by section of the Medical Treatment Planning and Decisions Act, 17/18

Section of the Act	Number of applications
Section 63	
Treatment consented to	99
Treatment determined to be emergency	16
Treatment determined to be routine	6
Other	35
Total	**156**
Section 62	
Referrals to VCAT	1
Total	**1**
Section 81	
Legislative requirements met	1
Application withdrawn	1
Total	**2**
Grand Total	**159**

Achievements and challenges

In the first three and a half months of the operation of the new Act, 156 applications were received under section 63 resulting in 99 separate consents for medical treatment.

In accordance with the Act, extensive efforts are made by the team to ascertain the person's values and preferences, either by direct contact with the person, wherever possible, or through consultation with family or other close associates.

Decisions are thoroughly documented and provided to health practitioners to place on the patient's medical records. This gives a clearer and more detailed account of how the decision has been made when compared to merely a signature on a consent form, as previously required.

The team has also been involved in presenting extensively on the new Act to a wide variety of medical and allied health professionals in metropolitan and rural and regional Victoria.

This will continue next year.

Major challenges have included:

- the surprisingly high number of section 63 forms submitted for a medical treatment decision for emergency treatment, with the mistaken belief that OPA's consent was required. This is being dealt with by continuing education.
- the lack of contact and requests for decisions from rural and regional Victoria
- health practitioners' understanding of the move away from 'disability' (as the criteria for a section 63 applications) to a determination of 'decision-making capacity'
- the expectations of health providers for short turnaround times for decisions (forms submitted on the day of treatment), possibly as a result of limited understanding of the section 63 requirements for the medical treatment decision maker under the MTPD Act.

There remain a number of unknowns in relation to the new Act. For example, significant medication decisions also fall within the decision-making authority of the medical treatment decision maker but this has not yet emerged as an issue in applications.

CASE STUDY

Walter

An example of exploration by OPA of a person's preferences and values, which led to the treating doctors then reviewing and tailoring the medical treatment to more closely align with the wishes of the person.

Walter, 68, was admitted to hospital following a stroke, however, of more concern to health practitioners, was a large fungating mass on his cheek, found to be an untreated melanoma.

Walter was assessed by his health practitioner as lacking the decision-making capacity to decide on the recommended (complex and lengthy) surgery to remove the melanoma, including the removal of his right eye.

The health practitioner was not satisfied that Walter understood the information that was presented to him. Nor could he demonstrate an ability to weigh up that information as part of a decision-making process. Walter had not made an advance care directive and had no other person who could be identified as his medical treatment decision maker.

Consequently, the health practitioner, under the new medical treatment Act, submitted a section 63 form online to OPA for a medical treatment decisions officer to make the decision about the surgery.

The officer, who is obliged to follow section 61 of the new Medical Treatment Planning and Decisions Act, ascertained Walter's preferences and values about the proposed medical treatment by meeting with him at hospital.

He expressed a consistent preference not to have the surgery if it involved the removal of his eye, although was less definitive about the removal of the mass on his cheek. Walter expressed a strong desire to maintain his independence and he valued having both of his eyes and eyesight as part of his independence.

At the same time, he demonstrated a poor understanding of the consequences of refusing surgery and the likely deterioration of his health and, subsequently, his independence.

Having established the effects, consequences and effectiveness of the proposed medical treatment from the health practitioner, the officer explored alternative treatment options and, also, whether refusing the treatment would be more aligned with Walter's preferences and values.

The officer considered all this and indicated to the health practitioner that the decision would be to refuse the surgery, as this may have been more aligned with Walter's preferences and values.

The health practitioner acknowledged the more detailed information about Walter's preferences and values and further reviewed the surgical options. A subsequent recommendation was made to remove the mass, but leave the eye intact, to which the officer consented.

Investigations

OPA conducts investigations under the *Victorian Civil and Administrative Act 1998* in order to assist VCAT in determining guardianship applications.

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

Investigations Team

On 1 December 2016, an investigations team was established and assumed responsibility for the majority of investigations referred by VCAT.

As funding was provided by Department of Justice and Regulation (DJR) for two years, the team has continued operations throughout the year.

Restoring investigations as a separate function within the program has allowed a greater focus to be brought to individual investigations and produced significant benefits: the length of time from the receipt

Table 2. OPA investigations and days to allocation, 16/17–17/18

Investigation type	16/17	17/18	Percentage difference
New investigations	258	334	
Temporary investigations	59	55	
Total	**317**	**389**	**+ 23%**
Days to allocation			
Days to appoint an investigator	20.24	13.75	**- 32%**

of orders from VCAT until allocation to investigators and the commencement of the investigation has been substantially reduced, with a corresponding improvement in turnaround time of reports. This has occurred within the context of a substantial increase in the number of referrals from VCAT to OPA for investigations.

New investigations

New investigations increased 23 per cent, without additional staff support. Although this testifies to the commitment of team members, managing such a sustained increase is not viable in the long-term. An additional staff member is proposed for the team next year.

Days to allocation

As noted, the time to allocation of an investigator has reduced substantially.

However, overall workload means that completing individual investigations within the target eight-week turnaround is difficult, particularly those in more isolated rural and regional areas.

Continuing the trend of previous years, a number of matters involve increasingly sophisticated legal submissions, often with high volumes of documentation. Finally, a number of matters have involved threats to staff safety requiring two staff to attend visits to proposed represented persons. As such, there was no reduction in the time taken to complete a matter from the point of delegation.

Reasons for investigations

Investigation referrals were made for a wide range of reasons and from a number of sources. The top ten reasons are illustrated in Table 3 below.

Table 3. Top ten reasons for investigation decisions, 17/18

Issue type	Total	%
Evidence of need for order	120	40.7%
Need for evidence of capacity/disability	89	30.2%
Need for accommodation decision	59	20.0%
Conflict between individuals	57	19.3%
Possible abuse/exploitation	49	16.6%
Enduring power of attorney (financial, pre-Sept 2015)	26	8.8%
Healthcare and treatment	26	8.8%
Welfare and safety at risk	24	8.1%
Enduring power of attorney (medical)	9	3.1%
Neglect (self and others)	7	2.4%

Note: One referral for investigation may have more than one issue.

Table 4. Result of 203 investigation matters, 17/18

Matter type	Total	%
Administrator appointed	39	19.2%
Application dismissed	34	16.7%
Application withdrawn	23	11.3%
Family/other appointed as guardian	18	8.9%
Other	11	5.4%
Public Advocate appointed guardian	76	37.4%
Special procedure authorised	2	1.0%

Results of investigations

Of the 203 investigations finalised this year, a substantial number resulted in VCAT applications being withdrawn or dismissed (28 per cent).

The Public Advocate was only appointed in 37 per cent of matters.

This suggests that investigation of a matter, by clarifying issues and providing additional information, does indeed divert matters which otherwise may have proceeded to guardianship.

CASE STUDY

Giulia

An investigation can clarify issues which are of benefit to the later appointment of a guardian.

A regional health service applied for a guardian to be appointed for Giulia, 81. Giulia's two sons were her joint medical and financial attorneys. Both were supportive of their mother but lived some distance away. Giulia lived alone in the family home.

Giulia’s husband had died in 2002, and his death significantly impacted her mental health and ability to cope day-to-day. She suffered from Major Depressive Disorder with re-occurring relapses, requiring acute psychiatric admissions for electroconvulsive therapy (ECT) and medical intervention to prevent self-harm.

Prior to her most recent hospital admission, Giulia had a trial of care at home with supports provided by the hospital. However, she became unwell and required another acute psychiatric hospital admission. The treating team and Giulia’s sons were concerned about her wish to return home again, due to her history of anxiety, suicidal ideation and self-harm.

OPA's investigators met with Giulia, who expressed a very clear wish to return home and an equally clear determination not to enter residential care. Giulia’s treating team and her sons held the view that she would be ‘at her best self’ and happiest in a supported environment where she would not be socially isolated. The investigator established that Giulia had not been trialled with either case management or supports at home. This suggested that a return home may be as successful if suitable supports could be provided.

Given the conflicting views, OPA recommended that VCAT appoint an independent guardian for Giulia to make decisions about her accommodation and services to support her. Neither of Giulia’s sons wanted to be appointed guardian, as they did not want to jeopardise their relationship with her by making a decision that she disagreed with.

VCAT appointed OPA as Giulia’s guardian for 12 months. In consultation with her treating team and her sons, the delegated guardian decided that Giulia could return home for a trial period with interim support services in place to monitor her mental health and wellbeing. Giulia also started attending regular exercise classes. The trial went well, and the delegated guardian discussed with Giulia the importance of accepting ongoing supports to maintain her wellbeing. Giulia accepted a Home Care Package and remains living at home with these supports in place.

Table 5. Number of new guardianship matters, 17/18

Guardianship type	Total
Guardianship	902
Temporary guardianship	41
Community Guardianship	20
Total	**963**

Advocate Guardian Program

The Advocate Guardian Program is a statewide service.

At year's end, there were 32 advocate guardians including team leaders providing guardianship, advocacy and, to a limited extent, investigations.

The program is divided into six teams: the intake team which receives and triages new orders and manages the waiting list; three regional teams overseeing matters in metropolitan, and rural and regional Victoria; the hospital project team; and the Community Guardianship Program.

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 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 VCAT orders.

New guardianship matters

There were 963 new guardianship matters this year.

Although a slight decrease on the record numbers of new orders last year, the carryover of existing matters not completed last year was slightly higher.

Overall, including cases carried over from previous years, OPA acted as guardian in 1806 matters, a small increase on last year.

Reduction in guardian waiting times

Of significant concern to OPA, those it represents and their families, is the length of time it can take to allocate a guardian following a VCAT hearing.

VCAT orders are triaged and placed on a waiting list, where they are monitored and assessed against risk and need. The intake team accepts an order and initiates a range of actions but cannot assume full responsibility for guardianship.

Inevitably, there is some time before final allocation and, the more matters on the waiting list, the longer it is likely any one person will need to wait. Careful management of the waiting list is crucial.

In the week ending 15 December 2017, 177 Victorians were waiting for a guardian, the highest point for the year.

In early 2018, there was a gradual but steady decrease in the number with 58 awaiting a guardian at the end of May, the lowest point.

This year closed with 92 people on the waiting list.

Some of this variation is attributable to slowing in the receipt of orders from VCAT, in the first few months of the year, but other factors included:

- the ability of the Investigations Team to pick up referrals as they arrive from VCAT
- a small number of new advocate guardians being recruited
- the impact of the Health Networks Pilot project continuing into a second year
- a dedicated effort by advocate guardians to pick up additional matters
- team leaders increasing their focus on reviewing current matters, recommending early revocation and allocating consistently to clear older cases.

Table 6. Days to allocate a guardian and percentage difference, 16/17–17/18

Days to allocate a guardian	16/17	17/18	Percentage difference
Guardianship, incl. Community Guardianship	50.51 days	47.90 days	**- 5%**
Temporary guardianship	2.31 days	2.21 days	**- 4%**

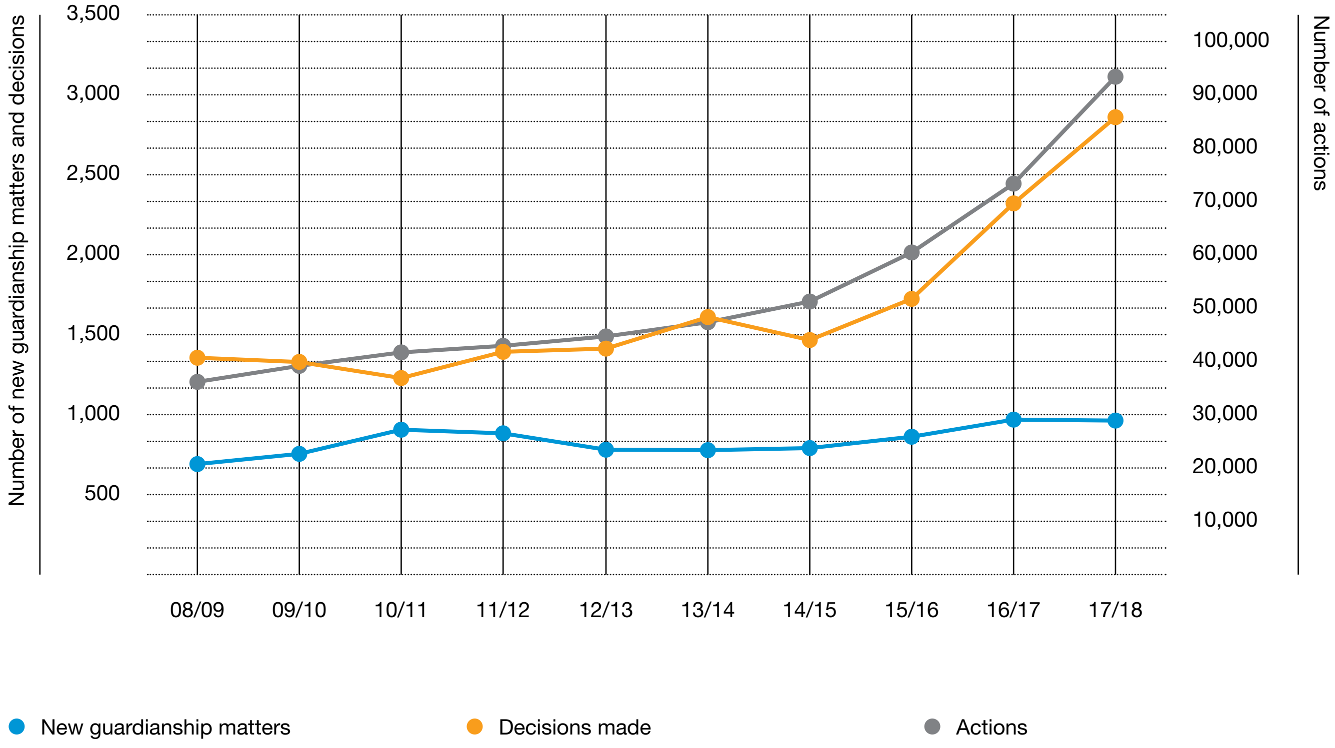


Figure 1. New guardianship matters plotted against decisions and actions, 08/09–17/18

Note: Complexity of matters, as measured by the proxy indicators of decisions and actions continues to rise.

National Disability Insurance Scheme impact

As at July 2018, there were 84 open guardianship matters in which the represented person was a National Disability Insurance Scheme (NDIS) participant. This is 20 per cent of the 415 cases eligible i.e. people under 65 years of age. Those over 65 years before the scheme is rolled out are not eligible.

Ultimately, that figure will rise to encompass the majority of all non-aged care guardianship matters.

The NDIS is beginning to have a major impact on the work of the program. It intersects in the following major ways:

1. Increased number of contacts in each action

Prior to the NDIS, the majority of disability clients were involved with DHHS. This meant that contact with an individual was often with them and one agency.

The structure of the NDIS is such that guardians are now involved with not just the client but with the NDIS, the support coordinator and potentially multiple service providers. Program data shows a significantly higher number of actions required for NDIS participants to achieve an outcome when compared to non-NDIS participants.

2. Service agreements

The NDIS requires signed contracts for the provision of services. When guardians are appointed with an authority to consent to services, they are viewed 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.

The OPA Legal Unit has developed a deed which can be signed by guardians. This is time-consuming and is not accepted by all service providers meaning that, in some instances, NDIS participants are unable to access services to which they are entitled.

3. Lack of a provider of last resort

The NDIS is a market-based system but, in certain instances, services for the disability market are virtually non-existent. For participants with very high needs, accommodation can be extremely difficult to obtain. As the Department of Health and Human Services (DHHS) reduces its role within the disability sector, responsibility for sourcing accommodation is increasingly falling on support coordinators. In many instances, there are no accommodation options. Attempts to secure suitable private rental are fraught, unsatisfactory and often short-lived. This is a serious problem and it is now common for a guardian to spend considerable time attending multiple meetings with many parties negotiating, lobbying or otherwise facilitating options.

CASE STUDY

Anna

An issue facing guardians is arranging supports for a represented person in the community with limited resources. Although, in this instance, the represented person was not in care, it is not uncommon for a guardian seeking to discharge a person home from hospital to be unable to do so because there are no support packages immediately available in the community.

Anna, 77, has Russian heritage and speaks very limited English. She has a mental illness for which she receives a monthly injection and a local mental health case manager. She lives alone in a unit in a regional town where she moved to be closer to her daughter.

While her daughter initially cared for her, she was no longer able to do so and in recent times, Anna largely managed by herself.

An application for guardianship was made on the basis that a decision was required as to whether Anna should move into residential aged care. VCAT appointed the Public Advocate as guardian. The delegated guardian made a referral, through My Aged Care, to the local Aged Care Assessment Service (ACAS) that same month, however, there was a delay of three months before ACAS could do an assessment.

The assessment noted that Anna would benefit from access to case management through a Home Care Package (level 4) with high priority as she was at risk of premature entry to a residential aged care facility. She would also benefit from daily district nursing as she reported occasionally forgetting medication. Referrals were made to a local multicultural service for advocacy and specialised support programs and to district nursing for daily support with medication administration. The guardian was advised there would be a wait of several months for the Home Care Package.

Anna expressed a strong wish to remain in her own unit. Although her circumstances were not ideal, the guardian felt that she would be able to remain at home and, therefore, could not justify removing Anna from her home against her wishes. The guardian followed up over the following months, confirmed district nursing was in place and training underway for a specialised support worker.

Five months later, no Home Care Package was yet available. The advice was that it could be nine-to-12 months for a level 4 package. However, approval for an urgent package had begun. Anna remained adamant that she was not yet ready to move into residential aged care. The guardian remained convinced that forcing her to leave would be counter-productive. The decision to maintain Anna at home has been positive, however, the lengthy delays in putting supports into place have led to Anna receiving less than optimal care.

Health Networks Pilot Project

In late 2017, pilot project partners, Alfred, Eastern and Monash Health Networks agreed to provide funds to allow the Health Networks Pilot project to continue for another year from February 2018.

This allowed OPA to continue to employ 0.5 EFT advocate guardians for each health network without any disruption, contributing to the reduction in the overall waiting list for allocation of guardian orders.

The interim first year report showed the time from VCAT guardianship lodgement to allocation of an OPA guardian had significantly decreased from 46.5 to 23.4 days. Estimated cost savings are $15,607 per patient, or over $4 saved per $1 spent by the health networks on increased staffing.

The reduction in waiting time meant patients in the participating networks who have had the Public Advocate appointed as their guardian, have spent less time exposed to hospital-acquired complications. As a result, these patients have an earlier transition of care to the discharge destination best-suited to their individual needs.

DHHS Memorandum

In April 2017, OPA signed a memorandum of understanding (MoU) with DHHS. The aim of the MoU is to:

- ensure that DHHS staff only make appropriate applications to VCAT for adult guardianship and/or administration orders for young people transitioning out of the parental responsibility of the Secretary
- provide a collaborative approach to the protection and support of vulnerable young people with a cognitive impairment on protection orders, before and during any transition, from being under the parental responsibility of the Secretary to having the Public Advocate appointed as their guardian.

In early 2018, an audit of guardianship orders for people 18 years old showed that, since July 2017, there had been fourteen matters where the Public Advocate had been appointed guardian for a young person and where Child Protection was either the applicant or had significant involvement.

However, despite the MoU being in place, there had been no contact with OPA prior to the application to VCAT.

Since this was brought to the attention of the Secretary, the situation has slowly improved and has been reinforced by presentations by the Advocacy and Guardianship Manager to statewide child protection managers.

Coercive authority: Section 26 orders

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

In such instances, a hearing must be held and a formal order must be 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 has seen a significant decline in the use of such orders.

Table 7. Number of section 26 orders actioned, 17/18

Response to section 26 orders	**Total**
Number requiring ambulance attendance and transport	15
Number requiring forced entry	0
Number requiring police attendance	11
Number requiring chemical restraint	3
Number requiring physical restraint	2
Total	**28**

Note: Numbers do not total, as one order may have multiple actions.

Community Guardianship Program

The Community Guardianship Program is comprised of volunteers and gives effect to the Public Advocate's legislative obligation to involve the community in the lives of people with cognitive disabilities.

After induction and training, the volunteers act as 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 and, as the disability environment becomes more complex, so too does its reporting requirements.

There is, however, a high level of satisfaction provided by the role illustrated this year by the achievement by two Community Guardians who have served 25 years.

This year, Community Guardians worked with represented persons across the NDIS, disability, mental health and aged care service systems in a range of settings, wherever possible maintaining people in the community.

They have provided:

- long-term advocacy to obtain appropriate accommodation for Acquired Brain Injury (ABI) clients with complex behaviours, mental health and justice issues
- complex advocacy for a tourist who became unfit for travel and rapidly deteriorated into palliative care without access to Medicare or an adequate visa
- culturally appropriate support and decision-making for an Aboriginal elder (bringing together service providers and community elders with the represented person and family to work through difficult decision-making around entering aged care)
- support for represented persons wishing to explore leaving institutional living to reside independently in the community.

CASE STUDY

Edith

OPA Community Guardians play an important role in protecting a vulnerable people in the community.

Edith, 83, is an Indigenous elder who has probable Alzheimer's disease. She grew up as a Ward of the State and is a member of the Stolen Generation. Edith had seven children including four sons, two of whom are deceased, and three daughters. Unfortunately, relationships between them are strained.

Edith had been caring for and living with her son before he died. She was grief-stricken and devastated and she rapidly deteriorated after his death, becoming progressively frailer, neglecting her self-care, diet and medications. She developed at-risk behaviours, wandering and getting into cars with strangers. There were reports of Edith couch-surfing, allegations of financial abuse and exposure to illicit drugs. Edith was admitted to hospital for a review of her behaviour. OPA became involved at this point and was appointed her guardian.

The guardian asked for a family case meeting that included the hospital Aboriginal liaison and elders from the local Aboriginal community who knew Edith. It was fortunate that the Community Guardian knew the elders from her work role. Edith and Julie, one of Edith's daughters, initially insisted she move back with Julie. The discussion explored the high level of Edith's support needs and her community's concerns for her if she returned to live with her daughter. It was resolved that Edith would visit her preferred local aged care facility and, if she wished, a respite trial would be arranged for her.

With support, Edith made the decision to trial respite after her visit. When the respite began, Edith shared a room with a friend who was already a resident. After several weeks, Edith felt safe to set up her own room. The hospital Aboriginal liaison worker maintained contact and provided great support for Edith during this transition. She is now settled and a permanent resident. Edith is frequently visited by Julie who lives within walking distance and Edith still participates in her community activities.

Advocacy

OPA provides advocacy through its guardianship and investigation work, and also directly as an individual advocate for persons with a disability.

Involvement varies from relatively short-term interventions, to lengthier specialist involvement in complex matters related to the Disability Act. Advocacy requests are one area of work over which OPA has discretion to accept or not.

As in previous years, lack of capacity to undertake advocacy has necessitated OPA making referrals to other organisations. OPA continues to accept and prioritise advocacy matters where an individual is at significant risk. Some significant OPA advocacy issues and examples for 2018 are listed below:

- OPA concluded its lengthy involvement in advocacy in a child protection matter where there was significant contention over the involvement of the father in the care of his son. Agreement was reached that the son, who has profound disabilities, could return to the care of his father, and suitable supports be provided to enable this to occur.
- In the past year, there has been a 100 per cent increase in Notices to Vacate issues under the Disability Act. Evicting people with significant behavioural issues exposes them to the risk of homelessness but, in the absence of DHHS, there is no provider of last resort to cover the emerging market gaps (see Patrick case p.20). This is emerging as a significant issue.
- The question of tenancy rights and the safeguarding of accommodation is a significant issue which requires monitoring with the transition to the NDIS. This issue is likely to achieve greater prominence as DHHS transitions from a service provider in shared supported accommodation to the role of a landlord only.
- There has continued to be limited advocacy involvement with the *Severe Substance and Dependence Treatment Act 2010* with only four matters referred this year. The number of people admitted for inpatient treatment through that Act has declined every year since its commencement.
- Short-term advocacy is a shorter-term intervention, sometimes lasting only one day or involving only one meeting. Many of the short-term advocacy interventions this year were because OPA was unable to undertake more extensive advocacy but still provided what service it could.

Table 8. New advocacy matters, 17/18

New advocacy matters	Total
Individual advocacy	60
Disability Act advocacy	158
Short-term advocacy	102
Total	**320**

VCAT liaison

OPA's 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 a guardian or 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 621 matters.

CASE STUDY

Patrick

The issuing of Notices of Temporary Relocation under the *Disability Act 2006*, when a person in shared accommodation assaults other residents is occurring with greater frequency and accommodations options are increasingly problematic.

Patrick has a diagnosis of intellectual disability and multiple health issues, and has been living in a DHHS–managed house for many years. He has been diagnosed with intellectual disability and mental health issues. He has recently transitioned to the NDIS and now has a support coordinator from a non-government organisation but continues to receive services from DHHS.

Patrick moved to his shared supported accommodation several years ago when his previous placement broke down due to a number of assaults against another resident. In April this year, Patrick was involved in a series of assaults and was briefly placed into police custody.

He was released to his family, rather than back to his residence. OPA was advised that this would be temporary until another accommodation option was found. The support coordinator was advised of the change in circumstances which would require a change in the NDIS plan.

Subsequently, a Temporary Notice of Relocation was served on Patrick and he was unable to return to his previous accommodation. Within a week of his returning to the family home, it was apparent that the level of support provided to him was inadequate. It is remarkable that this option was ever contemplated. In order to accommodate Patrick, his elderly mother was required to sleep on a couch in the lounge room.

Over the next two weeks, the advocate was involved in numerous discussions with the family, DHHS and the support coordinator highlighting, not just Patrick’s needs, but also the significant risk to his elderly mother. Patrick's mother only wished to do the right thing by her son but there were serious concerns regarding the risk posed to her and fears that Patrick, without support, would further regress in his behaviours.

The support coordinator, who was responsible for sourcing additional supports, agreed that 24-hour support could be provided, and an agency was located that could provide this within the family home. Patrick was taken out of the home during the day to give his mother a break. Overnight, the only place a support worker could be accommodated was in the kitchen. OPA continued to advocate that the situation was untenable.

Patrick was eventually relocated to a motel pending longer-term private rental arrangements. A final Notice to Vacate was issued, closing the door on Patrick's return to his previous accommodation. OPA's advocacy assisted the family who were unable to cope and at risk. Unfortunately, Patrick no longer has long-term accommodation and, while he is receiving support and services based on his NDIS plan, his future is less certain than before.

At a glance

389
new investigations

UP 23%
in one year

Cost savings of
$15,607
per patient participating in Health Networks Pilot Project

963
new guardianship cases

21%
increase in disability advocacy

1 in 6
investigations related to possible abuse or exploitation

1806
Victorians had an OPA guardian

99
medical treatment decisions made

100%
increase in Notices to Vacate issued under the Disability Act

Advice and Education Service

OPA provides an advice service which offers information, advice and education on a diverse range of topics affecting people with a disability.

The Advice and Education Service is comprised of six advisers (EFT 4.8), a senior officer, an education and engagement officer, a legal education and project officer and the coordinator.

The team attended regular in-house update training to ensure advisors were informed on new and amended legislation, and systemic issues in disability.

The service is also supported by other OPA staff, including the Legal Unit, when required.

Changes to the medical treatment laws had a significant impact on the service. OPA received funding for one ongoing 0.5 position and two 12-month advice and education positions to assist with the expected increase in enquiries.

There was increased demand for education sessions, particularly in the lead-up to the new laws.

General advice and medical advice lines

The service continues to provide information and expert advice on topics affecting people with disability.

Matters on the general advice line range from general information on administration and guardianship, applications to VCAT, powers of attorney, advance care planning and medical decision-making, to allegations of financial or physical abuse, and end-of-life decisions.

In the lead-up to the new medical treatment laws, the way in which calls were received and progressed at OPA changed significantly, with the aim of providing a more timely response to callers.

The changes to the call pathways had a significant impact for the service with the creation of the medical advice line, a dedicated line for health practitioners with a query about medical consent. The service's specific role is to assist health practitioners understand the legal pathway when a patient is unable to consent to medical treatment, including the process when requesting the Public Advocate to make a medical treatment decision.

The new call pathway has had an important impact on the service, with an expansion of its role to include responding to enquiries to the line in addition to the general advice line. The nature of calls on both lines is often complex and demanding, requiring a high level of sensitivity, expertise and sound judgement, while advocating for the rights of the person with a disability.

Who contacts OPA and why

The service provided 11,752 instances of advice. Of those, 90 per cent resulted from phone contact, with the remainder by email, letter or in person. This year, 50 per cent more advice was provided by email than last year.

Following the commencement of the new medical treatment Act in March, there was a 30 per cent increase in advice provided, compared to the month before. Advice requests continued to increase but not at the same rate.

Family and friends of people with disability constitute the largest category of callers (40.4 per cent) followed by professionals from the health and community sectors and government agencies (30.7 per cent). Callers also ring on their own behalf (18 per cent). The majority seeking advice about enduring powers of attorney do not have a disability. A smaller proportion relate to general non-enduring powers of attorney and supportive attorney appointments.

Most calls this year related to enduring powers of attorney (33.5 per cent) followed by guardianship and administration (24.1 per cent).

The other significant category of calls relates to medical consent, healthcare treatment, advance care planning and end-of-life issues (14.1 per cent). Calls to the new dedicated medical advice line constitute 10 percent of all calls.

Of all the enquiries received, 11 per cent (1156 calls) noted abuse issues; of these, 46 per cent (530) related to financial abuse, 39 per cent (450) involved neglect and 22 per cent (260) psychological and emotional abuse. Some calls (25.6 per cent) raised multiple abuse issues.

Call backs

The high volume of enquiries means that callers are more often unable to speak directly with an adviser and are required to leave a message requesting a call back.

The increased number of enquiries this year resulted in an increase in the number of calls not returned the same day (25 per cent). The number almost doubled (3337) compared to last year.

Factors contributing to this include a spike in enquiries relating to the new medical treatment laws, an increase in the complexity of calls and staff turnover.

NDIS

With the roll out of the NDIS underway, the service is receiving an increasing number of calls regarding access to the scheme and its operation. It is expected this topic will be a continuing source of enquiries.

The majority of callers (80.3 per cent) were provided or sent information with 10.3 per cent referred to an outside organisation.

Community Education Program

OPA's education focus for the year was on the new medical treatment laws, prioritising presentations to medical and allied health professionals.

This year, OPA delivered 138 presentations to a total audience of 6180, a 33 per cent increase from last year and a 27 per cent increase in the total audience.

The majority of information sessions (71 per cent) were provided to professionals, mostly in the health and community sectors.

OPA staff addressed both professional and community audiences on a range of topics including the role of OPA, substitute decision-making, supported decision-making, guardianship and administration, enduring powers of attorney, medical treatment decision making and advance care planning.

Demand for targeted community education on the MTPD Act has been very high. This year, 62 sessions were delivered to a total audience of 2736.

This made medical treatment the most commonly presented topic (45 per cent), followed by guardianship and administration (14.5 per cent) and powers of attorney (12 per cent).

OPA also undertook various projects in partnership with other organisations such as DHHS, Ethnic Communities Council of Victoria, Victorian Aboriginal Legal Service (VALS) and Carers Victoria. In line with OPA's *Cultural Diversity Plan*, engagement with CALD communities and service providers is a priority.

OPA education sessions were also provided during events such as Law Week, Cultural Diversity Week, World Elder Abuse Awareness Day and other significant days throughout the year.

Your Life, Your Choice

During the year, Attorney-General, Martin Pakula MP, launched a suite of community education resources produced for Aboriginal Victorians as part of the ‘Your life, your choice’ project.

The joint project by OPA and VALS was funded by the Victorian Legal Services Board Grants Program.

It was underpinned by the principle of self-determination and aimed to contribute to reducing family conflict and violence by raising awareness of substitute and supported-decision making laws, and increasing the ability of Aboriginal Victorians to plan for the future by making appropriate powers of attorney appointments.

Three fact sheets and a brochure were produced and distributed, as well as a handbook for workers at Aboriginal Community Controlled Health Organisations.

Information sessions were delivered to community members and workers at Aboriginal health services through a roadshow to eight regional locations and several metropolitan locations.

Through the project, OPA and VALS developed an effective and collaborative relationship that has led to further collaboration around elder abuse prevention.

Your Voice - Trust Your Choice

The *Your Voice — Trust Your Choice* Train the Trainer project is a continuation of OPA's previous collaboration with the Commissioner for Senior Victorians that, last year, led to the development of the booklet, *Your Voice — Trust Your Choice*.

The booklet contains tips for seniors making enduring powers of attorney and is a companion to *Take Control*. DHHS supported and funded both the booklet and the Train the Trainer project. Both initiatives aim to contribute to the prevention of elder abuse.

OPA developed a Train the Trainer module and facilitator's manual, and has delivered five Train the Trainer workshops.

Nine regional and outer-metropolitan workshops are planned for next year. OPA is grateful to the volunteer members of the reference group from U3A, Carers Victoria, Ethnic Communities Council of Victoria, Seniors Rights Victoria, VALS and DHHS.

1-in-3

calls about powers of attorney

11%

of calls related to abuse or neglect

At a glance

11,752

instances of advice

138

community education presentations to

6180 people

Monash Medical Students

OPA coordinates the OPA/VCAT - Monash Medical Student information sessions for fourth year Monash University medical students at VCAT.

In the weekly sessions, held over the duration of a university semester, OPA staff deliver information on the role of VCAT and OPA, guardianship and administration and medical treatment decision making, followed by students sitting in on a VCAT hearing.

The program is valued by the university staff involved who acknowledge the integral role of OPA in the program, and the value of the information.

Short-term advocacy

The Advice Service provided short-term advocacy for eight matters, generally relating to service or communication issues for a person with a disability. This involved follow-up phone calls, assistance with correspondence or clarification of information.

Section 42K Notices

Prior to the new MTPD Act, in non-emergency cases where a person required medical or dental treatment but could not consent to it, and there was no person responsible available and willing to provide consent, a medical or dental practitioner was required to lodge a notice under section 42K of the Guardianship and Administration Act.

This year, until 12 March 2018, the service received 357 section 42K notices.

Of those, 74 per cent met the legislative requirements, a lower percentage than in previous years.

Section 42K notices that concerned procedures likely to take place after 12 March were dealt with under section 63 of the MTPD Act.

This created a statistical anomaly, as many of the notices did not meet the legislative requirements of the earlier Act.

Section 42T Notices

Prior to 12 March 2018, the service also managed the process of ensuring that medical researchers met their legal requirements for conducting research involving a person unable to consent, or where there was no person responsible.

The researcher completed a section 42T certificate and submitted it to OPA. This year, the office registered five section 42T certificates compared to 15 last year.

Since the implementation of new medical treatment laws, sections 42K and 42T provisions of the Guardianship and Administration Act have been repealed.

The service provided advice on the new processes for conducting medical research involving a person who is unable to consent.

CASE STUDY

Advocacy for Ms D

A group home house supervisor contacted the Advice Service to discuss advocacy for Ms D, 50, a long-term resident with intellectual disability.

Ms D had been diagnosed with early onset dementia and had developed significant mobility issues. She was no longer able to stand up independently, and was unable to sit upright to eat.

The house supervisor advised Ms D appeared confused and was no longer able to use sign language as a means of communication.

She described Ms D's deterioration as rapid and believed that she should be transitioned to an aged care facility as her care needs could no longer be adequately met by the facility. She wanted independent advocacy for Ms D to ensure that the decision to move her was in her best interests.

The advice and education officer discussed suitable advocacy referrals and, ultimately, referred the matter to Ms D's former advocate guardian for short-term advocacy. The advocate guardian subsequently contacted the house supervisor and provided individual advocacy on Ms D's behalf.

About two weeks later, a hospital doctor contacted the Advice Service to discuss end-of-life decision-making and her view that guardianship was needed for Ms D. The officer raised concerns that, only two weeks earlier, discussions were had around Ms D transitioning to an aged care facility and that end-of-life decision-making was now being raised. They had a discussion with the doctor in order to better understand what was informing their clinical view of Ms D.

The doctor advised that Ms D was admitted to hospital with severe pneumonia and was being treated with oxygen, fluids and intravenous antibiotics. The doctor said Ms D was not showing signs of improvement and her condition was deteriorating.

The treating team's clinical assessment was that more invasive medical intervention would be of no benefit to Ms D and would do more harm in view of her condition and poor cognition. The doctor advised, if there continued to be no improvement in Ms D's condition, the treating team would make the decision to withdraw medical treatment and she would likely pass away.

The doctor's concern was that Ms D did not have a guardian or family members who they could discuss end-of-life decision-making with. The doctor was seeking advocacy for Ms D to ensure her human rights were met, that she was treated compassionately and that the best possible outcome was achieved for her, as she was unable to make decisions for herself at that time.

The advice and education officer, in the process of a skilled discussion with the doctor, explained the key determinants of when an application for guardianship was needed, a doctor's responsibility in determining futility or non-beneficial treatment and OPA's role.

OPA's role is to advocate for people with disability by ensuring, as far as possible, that a medical practitioner has considered how they have formed their clinical view (to withdraw or not offer medical treatment) and to ensure, as far as possible, that the decision has been informed by their clinical assessment of the patient and not by the disability or discriminatory views or assumptions on what they would consider to be 'quality of life'.

The doctor advised they were comfortable that their medical assessment of Ms D was based on her clinical presentation and not on what they would consider to be 'quality of life'.

The advice and education officer emailed the doctor more information including excerpts from OPA's Practice Guideline on advance care planning and medical treatment decision making. This included excerpts from the Australian Medical Association's position statement on end-of-life care and advance care planning in relation to medical futility and their code of ethics on futile or non-beneficial treatment.

The officer encouraged the doctor to call the Advice Service again if they or anyone else had any further questions or concerns about Ms D.

The doctor thanked the officer for assisting them to better understand the legal framework around end-of-life decision-making.

Safeguarding, Inclusion and Volunteer Programs

Introduction

OPA is proudly supported by 670 volunteers who provide their services in one or more of its four volunteer programs.

They represent a rich diversity of Victorians coming from a wide range of communities, backgrounds, life skills and experiences.

Among the volunteer base, are retired doctors, nurses, social workers, disability support workers, full-time and part-time workers and university students. They include those with a lived experience of the disability sector right through to those with no prior sector knowledge but who just want to make a difference in the lives of people with a disability in their community.

OPA's volunteers are also diverse in age with the youngest 22 years old and the oldest, 88 years old.

Despite their diversity, OPA Volunteers share a common goal which is to give a voice to vulnerable Victorians and to ensure that their human rights are being protected and upheld.

OPA's volunteer programs are challenging and confronting in nature and can best be described as 'pointy-end' volunteering. Given their nature, the volunteer work only appeals to those who are seeking a challenging and stimulating volunteer role.

Community Visitors

Community Visitors are empowered by law to visit Victorian accommodation facilities for people with a disability at any time, unannounced, and monitor and report on the adequacy of services provided, in the interests of residents and patients.

They ensure that the human rights of residents or patients are being upheld and that they are not subject to abuse, neglect or exploitation.

Independent Third Persons

Independent Third Persons (ITPs) assist a person with a cognitive impairment when making formal statements to Victoria Police.

The person with the cognitive impairment may be an alleged offender, victim or witness.

The role of an ITP is to assist the person to understand their rights and to support the person through the process.

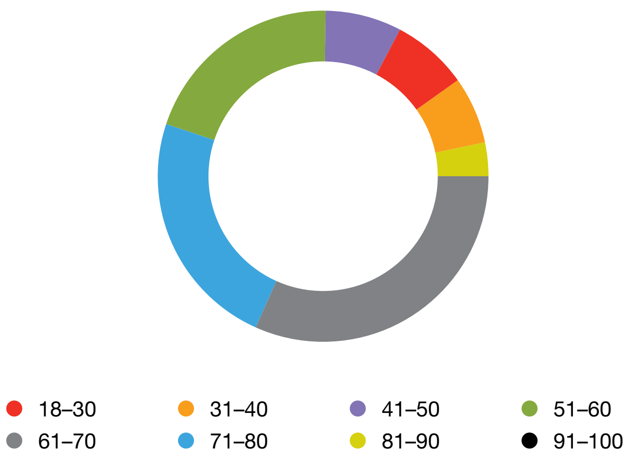


Figure 2. OPA Volunteers by age group, 17/18

Corrections Independent Support Officers

Corrections Independent Support Officers (CSIOs) support prisoners who have an intellectual disability at Governors' disciplinary hearings at Victorian prisons and/or remand centres. They ensure that prisoners with an intellectual disability receive a fair and just hearing.

Community Guardians

Community Guardians have official authority delegated to them by the Public Advocate under the Guardianship and Administration Act.

They act as guardians for people with a cognitive disability or mental illness, helping to ensure that their interests and rights are protected.

Community Guardians promote the best interests of the person with a disability, ensuring that decisions are the least restrictive of the person's freedom and take into account the wishes of the persons and, where possible, put them into effect.

1.

2.

Recruitment and training

During the year, OPA recruited an additional 110 volunteers, comprising 98 Community Visitors and 12 ITPs.

Recruitment of volunteers is always a challenge due to the confronting and challenging nature of OPA's volunteer work.

Other factors impeding recruitment include: the ageing population, delayed retirement, inability to make a long-term commitment, greater social and time pressures, other volunteering commitments with schools, sporting clubs or informal volunteering in assisting family members with a long-term illness or disability. [3]

OPA invests heavily in the training and upskilling of its volunteer base, ensuring that it is equipped with the knowledge and skills to perform its roles. This year, 64 separate training sessions were provided with 577 volunteers attending.

Many OPA volunteers value the ability to take part in training and embrace the opportunity to up-skill and engage in further learning.

Feedback

> **"It was a great informative session with practical examples to tie it all together. I loved it and look forward to more."**
>
> **"Interactive, lots of time for questions, and most relevant to the role and how to handle certain situations."**

Recognising OPA's volunteers

OPA highly values and appreciates the time, dedication and commitment that its volunteers give to performing their roles.

During the year, an OPA Volunteer Conference entitled 'Breaking Down the Barriers' was held at Victoria University attended by more than 220 volunteers, staff and guests. The day included topical keynote speakers and program-specific workshops.

A highlight was celebrating 30 years of the Community Visitors Program.

The conference was a great success with participants eagerly awaiting the next conference in 2019.

National Volunteer Week

In May 2018, OPA, again took the opportunity to celebrate its volunteers with an event held during National Volunteer Week.

In keeping with the 2018 national theme, the conference was entitled 'Give a Little, Change a Lot.'

The day included a guest speaker with a disability, the presentation of the Public Advocate's Award to an organisation that has made a significant change in the lives of people with a disability (Amaze) and the presentation of certificates for long-serving volunteers.

At both the OPA Volunteer conference and National Volunteer Week event, some 26 long serving volunteers were recognised for their contribution – a cumulative total of more than 375 years of service!

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1. The Public Advocate Colleen Pearce celebrates 30 Years of the Community Visitors Program with the longest serving volunteers of the three streams: Carol Haynes, Residential Services; Fay Richards, Disability Services; and Dominic Boland, Mental Health.
2. Community Guardian, Ray Brindle, receives his certificate for 25 years' service to the Community Guardianship Program.
3. 'Key Facts and Statistics about volunteering in Australia', Volunteering Australia 2015.

Community Visitor Maureen Fontana at Government House after receiving her award with Premier of Victoria, Daniel Andrews MP.

Volunteer Champion

Disability Community Visitor, Maureen Fontana, was recognised in the 2017 Victorian Premier's Volunteer Champions Awards.

A Community Visitor for 13 years, Maureen was recognised for her outstanding leadership role in mentoring a team of volunteers in her region, visiting group homes to ensure that the residents' human rights were upheld and that they remained free from abuse, neglect and exploitation.

Community Visitors Program

Community Visitors are Victorian Governor in Council appointees empowered to perform their role under three separate acts: the *Disability Act 2006*, the *Mental Health Act 2014* and the *Supported Residential (Private Proprietors) Act 2010*.

They perform a monitoring and reporting role, making unannounced visits to supported accommodation facilities to assess the service and quality of care being provided to residents and patients.

This year, OPA's 427 Community Visitors made 5297 unannounced visits, identifying 6228 issues.

Table 9. Community Visitor visits by stream, 17/18

Stream	Number of visits
Disability	2916
Mental Health	1614
Supported Residential Services	767
Total	**5297**

Community Visitors are appointed for a three-year term and visit in the stream applicable to the legislation under which they have been appointed.

They represent the 'eyes and ears of the community' to ensure that Victoria's most vulnerable residents and patients are being adequately cared for and remain free from abuse, exploitation and neglect.

This year, OPA recruited 98 new volunteers. Seventy-one have already been officially appointed as Community Visitors with others still in the process.

In addition, 97 existing Community Visitors were reappointed for an additional three-year term.

Activities

OPA staff support Community Visitors in their regular visiting work and assist Regional Convenors to lead and mentor their teams. They also facilitate meetings with service providers and assist with the preparation of the Community Visitors annual report.

Training

The Training Steering Committee progressed the following initiatives:

- a tailored Report Writing and Advocacy module
- the roll out of the 15 Accommodation and Personal Support Standards training module
- an NDIS information session for Community Visitors with a specific focus on how the NDIS impacts their work
- development of a Community Visitor abuse detection training session and resources funded by DHHS. The project will be rolled out in 2019.

Fifty-seven training and professional development sessions were attended by 497 appointed and 'in training' Community Visitors.

Boards

Each stream has its own board. Its role is to represent Community Visitors, oversee training, prepare publications about the role of Community Visitors and prepare an annual report to Parliament.

Each Board meets quarterly, before coming together as the Combined Board.

During the year, the Combined Board contributed to:

- A DHHS-financed Funding and Service review of the program. The review resulted in some additional resources being provided over two financial years.
- Quality improvement initiatives including:
  - ensuring visit reports were scanned and entered centrally into the case management system
  - developing two reports, one detailing all outstanding responses and the other providing a complete picture of service provider issues.
- Initiatives that help keeping services accountable including:
  - referring 77 abuse matters to the Disability Services Commissioner
  - Community Visitors documenting concerns about inconsistent ECT practices statewide leading to audits by the Chief Psychiatrist of all services including private hospitals
  - Community Visitors documenting access to NDIS by residents in Supported Residential Services (SRS).
- Contribution to the OPA strategic plan.

End of an era

During the year, OPA's longest serving volunteer, Fay Richards, resigned after 30 years as a Community Visitor.

In recognition of this milestone, and to thank Fay for her significant contribution, an event, attended by many staff and volunteers, was held in her honour.

Although she has officially resigned as a Community Visitor, Fay is continuing to work at OPA one day a fortnight, ensuring her exceptional knowledge and experience is not lost.

Uncertainty about the future

A key challenge for the program is the uncertainty around the NDIS Quality and Safeguards Framework and what this means for the continuation of the program.

Program staff are keeping abreast of all developments in the NDIS roll out and what this might mean for the program. In the absence of any clear direction, it is business as usual.

Community Visitors Program's longest serving volunteer, Fay Richards.

ITP Program

The Independent Third Person (ITP) Program is a 24/7 statewide volunteer service operating in all police stations in Victoria.

ITPs attend police interviews for adults and young people with disability to support communications during the interview process. They support alleged offenders, victims and witnesses who may have a cognitive impairment such as intellectual disability, mental illness or dementia.

ITPs are independent of the police process and do not instruct a person with disability on how to deal with the issue they are facing or provide legal advice.

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 the person.

The average time volunteers spend in the program is five to ten years, however, a number of volunteers have been active for more than 20 years. The program has been operating for 30 years.

Overview

During the year, 192 ITPs attended 2537 interviews, an average of 211 interviews a month.

The number of ITP volunteers fell by 17 per cent, increasing the average number to 13 per volunteer.

Of the interviews attended, alleged offender interviews made up the largest group (81 per cent), followed by victim interviews (16 per cent). There were 81 interviews with witnesses (3 per cent).

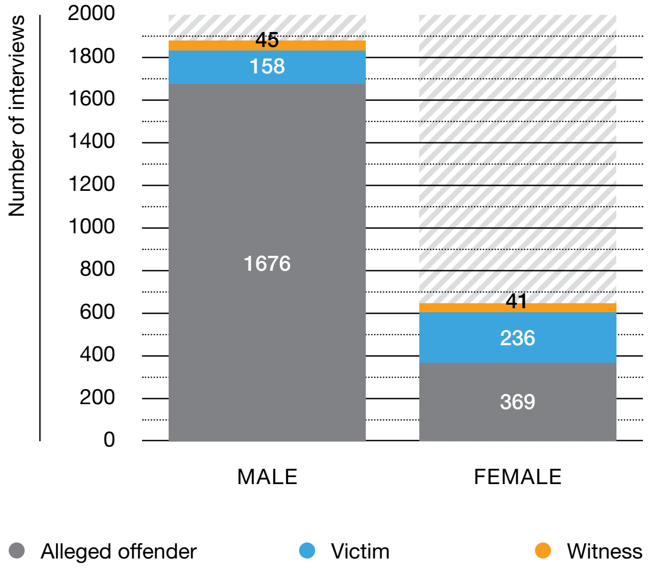


Figure 3. Interview by client type and gender, 17/18

Note: In addition, 12 clients identified as intersex, transgender, both gender or other.

Client profile

The majority of clients are male (74 per cent) in all client categories.

Figure 3 shows the gender breakdown. More than a third of female clients were interviewed as victims while 91 per cent of male clients were alleged offenders.

Type of offence

This year, 51 offences were recorded in the interviews attended by the ITPs, with assault being the most frequent. See Figure 4.

In the alleged offender group, the highest proportion (15 per cent) of offences was theft (shoplifting) followed by assault (13 per cent) and criminal damage (10 per cent).

In the victim group, the majority were female. Of these, 62 per cent were victims of sexual assaults and sexual offences, and 29 per cent were assaulted.

Type of disability

Almost half of the clients who required ITPs had intellectual disability (48.1 per cent).

Other disabilities included mental health (21.4 per cent), ABI (19 per cent), physical disability (1.3 per cent) and dementia (0.4 per cent). Type of disability was not stated or unknown for 9.9 per cent of clients.

In most cases, police or clients informed the ITP of the client's disability. In some cases, client disability was reported by support workers, family members, service providers and medical professionals.

Client age

ITP clients ranged in age from young people to older adults. During the year, almost a quarter of clients came from the 26-35 age group (24 per cent).

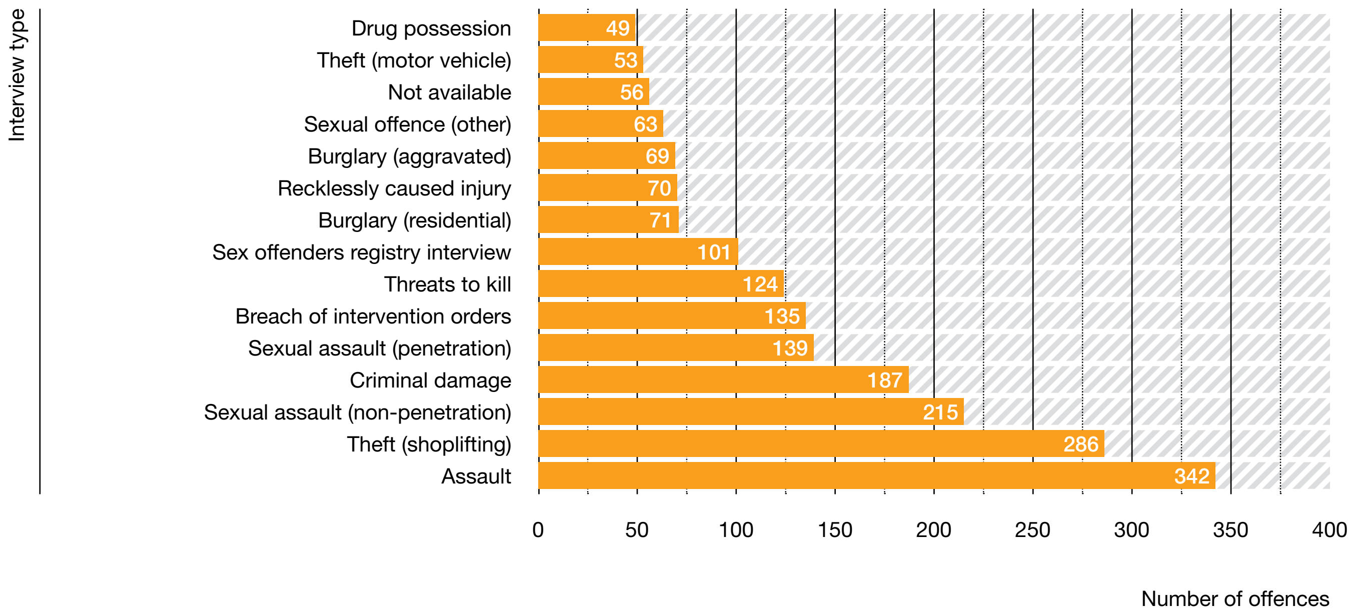


Figure 4. ITP interviews by offence type, 17/18

The second largest age group was 18-25 years (22 per cent). Other age groups were under 18 years (15 per cent), 36-45 years (18.1 per cent), 46-55 years (11 per cent), 56-65 years (3.9 per cent), and 65 plus years (six per cent).

Location of interviews

ITPs attended interviews at 233 police stations across Victoria. Figure 5 shows the stations where the highest number of interviews took place.

Funding

This year, the program received a welcome increase in funding in the State budget across two years. This will assist the employment of additional staff, ensuring that the program is able to meet demand for ITPs in police interviews.

Recruitment

Recruitment and training of more ITPs is a priority, as the number of active volunteers in the ITP program is less compared to past years.

Demand and capacity

While the program attended 2537 interviews over the year, it has not been able to meet growing demand. Coupled with the slight reduction in the number of ITPs, there is more pressure on the existing volunteer pool. This is exacerbated by the increasing complexity of matters, often necessitating the need for legal advice to guide the program.

There are additional demands on support staff to prepare volunteers to meet these needs and, in some instances, debrief ITPs following particularly difficult or traumatic interviews.

This year, there was an increase in homicide interviews attended by ITPs. This has an impact on program staff who are required to provide a high level of immediate and, often, after-hours support as well as the ITP.

A growing number of ITPs have been subpoenaed to court following attendance at an interview. This can occur sometime after the initial interview. Substantial staff time is spent supporting volunteers through the process.

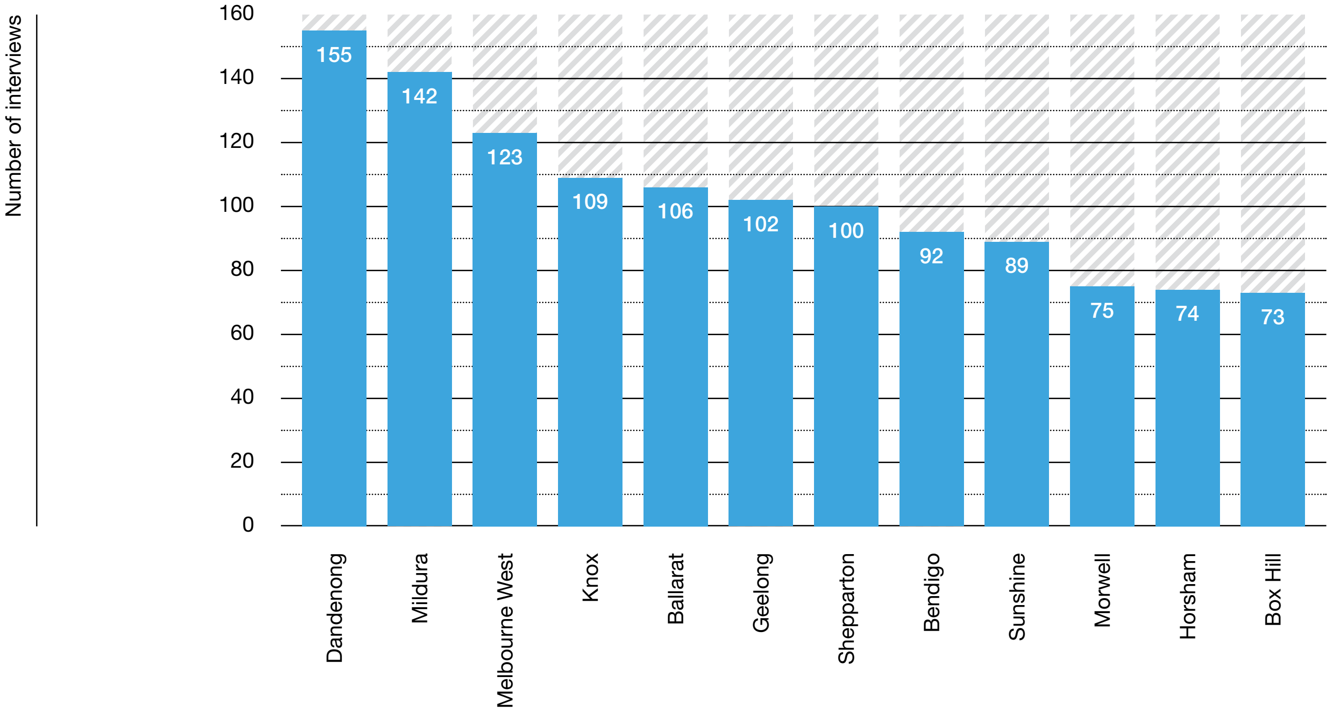


Figure 5. Police stations with highest number of ITP interviews, 17/18

670

volunteers

At a glance

6228

issues identified by Community Visitors

2537

ITP interviews

297

CISO hearings attended

CISO Program

Overview

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

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

During the year, CISOs were requested to attend 95 times for 297 hearings in seven of Victoria's thirteen prisons (excluding the Judy Lazarus Transition Centre).

Program limitations

The CISO program is limited to prisoners with a diagnosed intellectual disability and excludes those with cognitive impairment caused by other conditions, such as mental illness or an ABI.

Prisoners with disability

People with disability are significantly over-represented in the prison population. A 2015 Australian Institute of Health and Welfare report found that almost half of those entering prison have a mental health issue, compared with 18 per cent of the general population.

The figures are even starker for Indigenous prisoners with 73 per cent of Aboriginal and Torres Strait Islander men and 86 per cent of Aboriginal and Torres Strait Islander women in prison having a diagnosed mental health condition.

A 2013 Australian study looking at cognitive disability found that up to 12 per cent of the prison population has an intellectual disability (compared to three per cent of the general population), and up to 30 per cent has a borderline intellectual disability. Almost 60 per cent of people with intellectual disability have severe communication limitations.

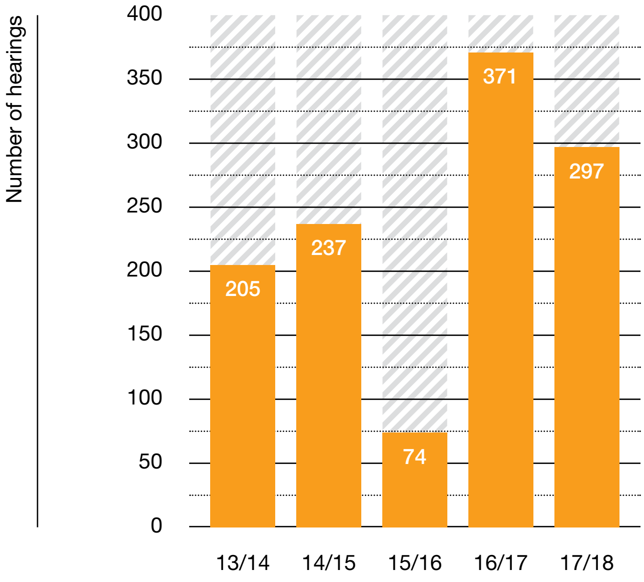


Figure 6. Number of CISO hearings, 13/14–17/18

Systemic Advocacy Unit

The Systemic Advocacy Unit promotes OPA's vision for a just and inclusive society that respects and promotes the dignity and human rights of all people.

During the year, the unit advocated for public policy and legislative reform in its systemic advocacy on:

- the NDIS
- elder abuse
- families, child protection and justice
- closed environments.

NDIS

OPA continues to advocate for ongoing reform of the NDIS, with many ideas for improvement coming from the experiences of OPA clients, staff and volunteers.

A significant number of OPA's advocacy and guardianship clients with complex and challenging support needs are not seeing the benefits that the NDIS is intended to deliver, while OPA's Safeguarding, Inclusion and Volunteer Program reports a range of transitional issues as the NDIS is rolled out.

The interface between the NDIS and other service systems – particularly justice, mental health, health and child protection – continued to raise challenges for those people OPA represents.

Safeguards

The establishment of the NDIS Quality and Safeguards Commission is a significant development as the scheme approaches full implementation.

OPA made a submission to the NDIS Quality and Safeguarding (And Other Amendments) Bill maintaining that the NDIS Quality and Safeguarding Framework does not go far enough to protect and promote the rights of people with disability.

The Public Advocate, in her presentation to the Community Affairs Legislation Committee, highlighted the importance of Victoria's Community Visitors Program, including the role of Community Visitors as a human rights safeguard, highlighting systemic failures and advocating for change.

Transitional arrangements and beyond

The extensive reforms entailed by the NDIS are affecting all disability service systems, with OPA particularly concerned about the impact on residential services for people with disability who have significant support needs.

OPA believes many of the tenancy protections that have historically been available to people with disability are being eroded, as new models of supported accommodation are created in response to NDIS funding and the new Specialist Disability Accommodation (SDA) replaces state-based systems.

Following OPA's submission to the Victorian Government's review of rights in SDA, it was invited to join the Victorian Government's NDIS housing working group. OPA is seeking to ensure the rights of people with disability (particularly those whose disability-related behaviours may present a threat to their tenancy) are improved rather than eroded by transition to the NDIS.

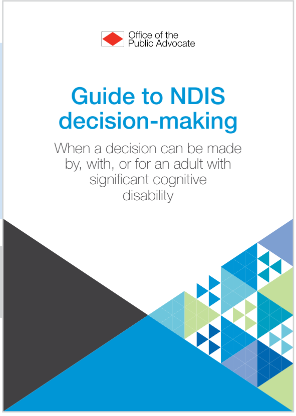
People with complex needs

OPA has been involved in advocacy efforts on behalf of many people with disability who have complex needs, often have a dual disability, and present with behaviours of concern.

OPA has made three submissions this year detailing issues that have arisen for people with complex needs during transition, as well as issues for participants with cognitive impairment. These people are more likely to experience difficulties maintaining tenancies and relationships with support staff and, where they are inadequately supported, experience regular crises requiring flexible and rapid responses to prevent homelessness or interaction with the justice system.

OPA is also undertaking an analysis of difficulties arising for people with complex and challenging support needs in the NDIS.

By sharing the stories of some of its clients, OPA aims to provide further evidence of the need for significant, immediate and effective reforms to ensure the NDIS delivers the intended transformational benefits for all people with disability. The research will be published next financial year.



Office of the Public Advocate

Guide to NDIS decision-making

When a decision can be made by, with, or for an adult with significant cognitive disability

1.

NDIS decision-making guide

OPA developed a guide outlining when decision-making support, advocacy and substitute decision-making will be needed for potential and current NDIS participants who have significant cognitive disability.

It also promotes informal decision-making, wherever possible.

The guide has been welcomed across Australia with copies being sent to the National Disability Insurance Agency (NDIA) and National Disability Services.

Elder abuse

OPA has continued to build and share its expertise around elder abuse risk factors, incidence, effective responses and prevention this year.

In February, the Public Advocate launched the National Ageing Research Institute's Elder Abuse Community Action Plan for Victoria.

An article by OPA staff entitled 'The prevalence of elder abuse among adult guardianship clients' was accepted for publication by the Macquarie Law Journal for the 2018 special edition devoted to the issue of elder abuse.

National project

On behalf of the Australian Guardianship and Administration Council (AGAC), OPA is leading two national projects on enduring powers of attorney which are being 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 enduring documents.

The second project, in conjunction with the Protecting the Rights of Older Australians Working Group, is to develop a discussion paper about enduring appointment laws and practices throughout Australia, focussing on enduring appointments with financial responsibilities for referral to the Council of Attorneys-General.

Families, Child Protection and Justice

Parents with disability

This year, DHHS Child Protection approached OPA in relation to an issue of children with disabilities entering the child protection system because their parents were unable to get sufficient NDIS support to care for them at home.

As part of exploring ways of avoiding this very negative outcome for children and families, OPA is participating in the steering committee of the Steps to Speaking Up Project, coordinated by VALID and funded by DHHS, to develop advocacy support for parents with disabilities in the child protection system.

OPA also made a submission to the Australian Law Reform Commission's Review of the family law system, outlining the systemic barriers to people with disabilities who are parties to parenting and property matters.

It examined issues surrounding 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.

Children's Matters group

OPA is part of the Children Matters group set up in 2016 due to the concern of a range of organisations about the changes in the *Children Youth and Families Act 2005*. The changes, aimed at making decisions about the permanent care of children more quickly, also make it more difficult for families in the child protection system to raise their children.

Following two successful forums, the group made a submission to the Commissioner for Children and Young People's review of the legislation.

The relevant Minister accepted four of the 20 recommendations, accepted four in principle and is conducting a longitudinal study relating to the other 12 recommendations for changes to the legislation.

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1. OPA's *Guide to NDIS decision-making* has been welcomed across Australia.

2.

Forum

The Public Advocate co-hosted the successful forum 'My Body, My Life, My Choice: Preventing abuse and promoting personal safety of young people with disability', with the Principal Commissioner for Children and Young People, Liana Buchanan.

Southern Cross University's Centre for Children and Young People presented its important research which explored the perspectives of young people with disability, their supporters and families about feeling safe and developing strategies to stay safe.

One hundred participants representing more than 30 organisations took the opportunity to collaborate in developing multiple strategies to promote change, building on the research findings. OPA hopes the discussions contribute to meaningful change to policy and practice, guided by the voices of children and young people with disability.

Closed environments

During the year, OPA engaged in a range of systemic advocacy work aimed at protecting the rights of people with disability who are residing or detained in closed environments such as aged care facilities, hospitals, mental health units, disability accommodation and SRS.

OPA had previously convened a roundtable of 27 legal and policy experts in the fields of guardianship, mental health, disability and restrictive interventions. The purpose was to identify practices undertaken in social care and residential settings which constitute a restriction on liberty and discuss when they should be subject to some form of authorisation.

OPA then released a discussion paper, 'Designing a deprivation of liberty authorisation and regulation framework', to promote further discussion and direct attention towards practical reform, which attracted considerable interest, including from international experts.

OPA made a submission in response to the Australian Human Rights Commission's consultation paper about how the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT, ratified by the Australian Government in December 2017), should be implemented in Australia, focussing on how it should operate to protect the rights of people with disability.

Other systemic work

Community Visitors

The potential role of Community Visitors in the implementation of OPCAT was discussed, as well as the limitations of complaints-based systems, which are most noticeable for people with cognitive impairment who can be limited in their ability to seek help or remove themselves from abusive situations.

OPA's submission to the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia endorsed a number of relevant recommendations of the Australian Law Reform Commission's inquiry into elder abuse and recommended an expansion of the aged care Community Visitors Scheme to empower visitors to inspect and report on residential aged care, with a clear mandate to monitor abuse, neglect, and social inclusion.

These matters were also raised by the Public Advocate in her presentation to a parliamentary committee and in OPA's submission to the consultation paper on the implementation of Specialist Dementia Care Units to support people who experience severe behavioural and psychological symptoms of dementia.

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2. Young people with disability forum attendees (from left): Alanna Julian, researcher, young person, self-advocate; Colleen Pearce, Public Advocate; Liana Buchanan, Victoria's Principal Commissioner for Children and Young People; Lucy Toovey, Executive Director, Wellbeing, Health and Engagement, Department of Training and Education; Professor Sally Robinson, Centre for Children and Young People, Southern Cross University.

3.

Supported decision-making

During 2015–2016, OPA partnered with Victorian disability advocacy group, VALID, to match volunteers trained in the practice of support for decision-making, with NDIS participants who wanted and needed this type of support.

This was the OVAL Project.

The NDIA has chosen to continue to fund the work started by this project in the form of the Choice Mentor Program and OPA has been involved in preparing the project's key documentation, including the project's model of practice.

OPA has also established a practice group to explore the extent to which supported decision-making can be applied in the context of guardianship.

Launch of *Supported Decision-Making in Victoria*

During the year, OPA published *Supported Decision-Making in Victoria: A guide for families and carers*, launched by Parliamentary Secretary for Carers and Volunteers, Gabrielle Williams MP.

The guide, the first of its kind, is for families, carers and friends who have been appointed, or are considering becoming, a legally appointed decision-supporter in Victoria.

The guide outlines the new laws in Victoria and provides people accepting these appointments with practical information about supported decision-making.

Justice system

OPA continues to engage in systemic advocacy opportunities concerning the disproportionate number of people with disability involved in the criminal justice system.

Of particular concern are NDIS interface issues that are arising in regard to funding for 'offence specific' supports for participants on Supervised Treatment Orders under the Disability Act (Vic) and participants on orders under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

The Public Advocate referred to these, and other interface issues, in her presentation at the Reintegration Puzzle: Smarter Justice, Safer Communities panel discussion on people with disability in the criminal justice system and the NDIS.

Acquired Brain Injury

OPA's coordination of a privately funded grant program operating for the last five years culminated with the launch in August of the landmark report *Recognition, Respect and Support: Enabling justice for people with an ABI*.

The research, carried out by Jesuit Social Services and the RMIT University Centre for Innovative Justice, included participation from people who have lived experience of ABI and the criminal justice system.

The researchers reported that the gross over-representation of people with an ABI in Victoria's prison system will only be reduced if the voices of people with one are taken seriously and their needs addressed by the criminal justice system.

Mental health

OPA's systemic advocacy work in the mental health space has focused on the impact of the NDIS on services for people with mental illness.

OPA also made a submission to the National Mental Health Commission's consultation on developing a national mental health and suicide prevention, monitoring and reporting framework.

OPA staff and a number of Community Visitors attended a presentation by the Mental Health Complaints Commission on the recommendations contained in its report on *The Right to be Safe: Ensuring sexual safety in acute mental health inpatient units*.

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3. Parliamentary Secretary for Health, Carers and Volunteers, Gabrille Williams MP, and project coordinator Michelle Browning.

Advisory groups

During the year, OPA was represented on the following committees and advisory groups, all of which have a focus on protecting and promoting the rights of people with disability:

Table 10. Committees and advisory groups OPA was represented on, 17/18
Advisory groups
Specialist Group Supporting the National Research Agenda on Elder Abuse (at the invitation of the Australian Attorney-General's Department)
Australian Institute of Family Studies' Technical Advisory Group for its Elder Abuse National Research
Seniors Rights Victoria Advisory Committee
Elder Abuse Advisory Group (Victorian DHHS)
Children's Matters group
Human Rights Committee of the Supreme Court Masters Office: Clinical Working Group
Elder Abuse Roundtable
Law Institute of Victoria Elder Law Committee
Women with Disability Victoria Safeguards Project Reference Group
Victoria Police Seniors Portfolio Reference Group
Victorian Electoral Commission's Disability Action Plan Advisory Committee
Consumer law and people with cognitive impairment research group, Melbourne Social Equity Institute, University of Melbourne
Balit Narrum
Steering Committee of VALID Steps to Speaking Up Project
Project Steering Committee for the Integrated Model of Care for Responding to Suspected Elder Abuse (Victorian DHHS)
University of Melbourne Hallmark Disability Research Initiative Steering Committee
Victoria Police Disability Portfolio Reference Group
2018 Victorian Disability Awards judging panel
VCOSS-RMIT Future Social Service Institute Industry Advisory Council
Victorian Advance Care Planning Advisory Group
Participants with Complex Needs NDIS Implementation Taskforce
Colanda Community Consultation working group
Carers Victoria Carers Advisory Committee

Legal Unit

Introduction

The Legal Unit provides legal services to OPA. It also incorporates OPA's Disability Act Officer role.

Five lawyers provide advice to all OPA programs.

In terms of secondary legal support for OPA's clients, the unit opened 397 new matters, 155 more than for the previous year, an increase of 39 per cent. Of the 397 new matters, 242 (or 64 per cent) related to NDIS service agreements.

Last year, the unit attended at hearings on 62 occasions; this year, 84, a 35 per cent increase.

NDIS service agreements

OPA is guardian for a number of NDIS participants, and service provider agreements are necessary to set out how their services are to be provided. The vast majority of NDIS agreements provided by service providers to OPA went beyond the authority of guardians to sign and so had to be renegotiated.

In 2017, OPA developed its own deeds of agreement to service providers that were within the authority of guardians to sign. This helped standardise OPA's approach and processes and nearly all service providers have agreed to operate on the basis of them.

Nonetheless, the volume of agreements, each of which is tailored to the circumstances of the participant and the service being provided, is staggering. The agreements are usually for 12 months, a period based on the review cycle of participants' plans.

The NDIS is not yet fully rolled out in Victoria and, so, OPA has not reached peak need regarding the engagement of services for its NDIS participant clients. A few providers are not willing to sign OPA's agreement and this can result in a delay in getting services or a need to find an alternative service provider.

Medical Treatment Planning and Decisions Act

The MTPD Act heralds a significant philosophical change in the way decisions about medical treatment are made for people who lack capacity to make them.

The unit provided extensive legal support to OPA and the community in preparation for the commencement of the new law by way of the development of forms, practice guidelines, staff training, community education presentations, publications and web information for health professionals and the community.

Significant areas of legal casework

OPA staff and volunteers approach the unit for advice and support.

At times, this will involve representation of the member of staff in courts and tribunals. The unit's longest hearing concerned the representation of an OPA advocate for a child with disabilities arguing for the return of the child to the care of one of his parents.

There have been many requests that OPA be litigation guardian for a person with disabilities in various jurisdictions. OPA has agreed in a limited number of matters where the concerns are not financial but go to lifestyle and family matters. Sometimes, the litigation guardian is also the OPA guardian for the person, at other times, a member of the unit has undertaken the litigation guardianship role and used external lawyers.

Family disputes may be the reason why a person has an OPA guardian. In a number of cases, intervention orders are sought either prior to OPA's involvement or as part of OPA's need to protect the person. The unit provides legal representation for guardians in such matters.

This year, the unit has also been involved in coronial matters.

Law reform

The UN Convention on the Rights of Persons with Disabilities (CRPD) has fostered legal developments designed to improve people's lives. The first objective of the *National Disability Insurance Scheme Act 2013* is to give effect to the CRPD.

This year, the Australian Government passed the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*. This Act establishes the NDIS Quality and Safeguards Commission which will commence in Victoria on 1 July 2019.

The commission will enforce standards that will apply for service providers. In anticipation of its commencement in NSW and SA on 1 July 2018, the government released rules for a code of conduct, complaints management, incident management and reportable incidents, practice standards (worker screening), provider registration and practice standards, among others. OPA provided its reflections on these.

At a glance

397

new matters

39%

increase in new matters

35%

increase in hearing attendances

64%

increase in NDIS service agreements

Victorians with disabilities in residential services (as defined in the Disability Act) have benefited from residential rights set out in that Act. OPA has advocated that these rights, especially rights of tenure, continue once the NDIS is fully operational.

The unit has also contributed to OPA's submissions and work on guardianship reform, reform of the *Family Law Act 1975* especially regarding parents with disabilities and litigation guardianship, and intermediaries.

Disability Act Officer

OPA's Disability Act Officer provides advocacy in relation to:

- residential evictions for people with disability
- the use of restrictive interventions on people with disability
- compulsory treatment for people with an intellectual disability who are regulated by the Disability Act.

Last year, the unit reported that there had been a significant increase in the number of notices for people with disabilities to leave their accommodation.

This year, 33 people received Notices to Vacate their accommodation. While 14 of these were solely to repair the property, the majority were in response to the resident's behaviour.

The process under the Disability Act is designed to restore the person to their accommodation if it is possible to resolve the matters that gave rise to the notice. The service provider must take reasonable steps to resolve them.

Where the matters are not resolved, the person is at risk of homelessness, becoming embroiled in the criminal justice system, becoming ill or even dying.

In the past, DHHS has fulfilled the role of provider of last resort but, as the NDIS rolls out, this role is diminishing and sourcing appropriate accommodation for high risk and high need individuals is becoming more difficult.

Not only are the number of these matters increasing, but so is the complexity of their resolution.

Feedback

Because of the work OPA does, it is important to have a transparent and accessible process for the management of feedback and complaints.

Responding to feedback and complaints provides an opportunity to review and improve the work.

OPA understands that not everyone will agree with the way in which it carries out its statutory role or the decisions it makes; they can have a profound impact on a person under guardianship, their family and others involved in their life.

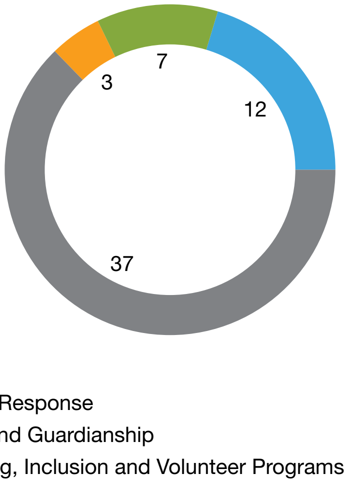


Figure 7. Feedback and complaints by OPA program area, 17/18

Feedback and complaints are usually responded to within ten working days, and a complainant is provided with an outcome in writing. Many instances of feedback and complaints occur because of confusion about OPA's roles, so an important part of the internal process is to provide complainants with information.

Feedback and complaints are analysed to see if there are any practices that need to change to improve service. This may include how records are maintained or decisions are recorded. One complaint resulted in an improvement to OPA's phone call pathway.

This year, 101 matters were reviewed following feedback and complaints.

This included 59 complaints, six requests for a review of a guardian's decision, 27 informal complaints (managed informally) and nine ministerial or Ombudsman enquiries. This was an increase of 26 per cent from last year and is reflective of the increasing demand for OPA's services. Despite this, only six complaints concerned a delay in the appointment of a guardian.

Informal complaints increased by 125 per cent and these were able to be dealt with informally at the local level without having to resort to a more formal process.

Complainants provided feedback about how OPA staff interacted and communicated with them, the quality of services provided, including a decision about accommodation and access to a person under guardianship.

There was a 100 per cent increase (from three to six) in the number of requests for a review of a guardian's decision. All requests involved accommodation

9 Ministerial and Ombudsman enquiries

59 formal complaints

27 informal complaints

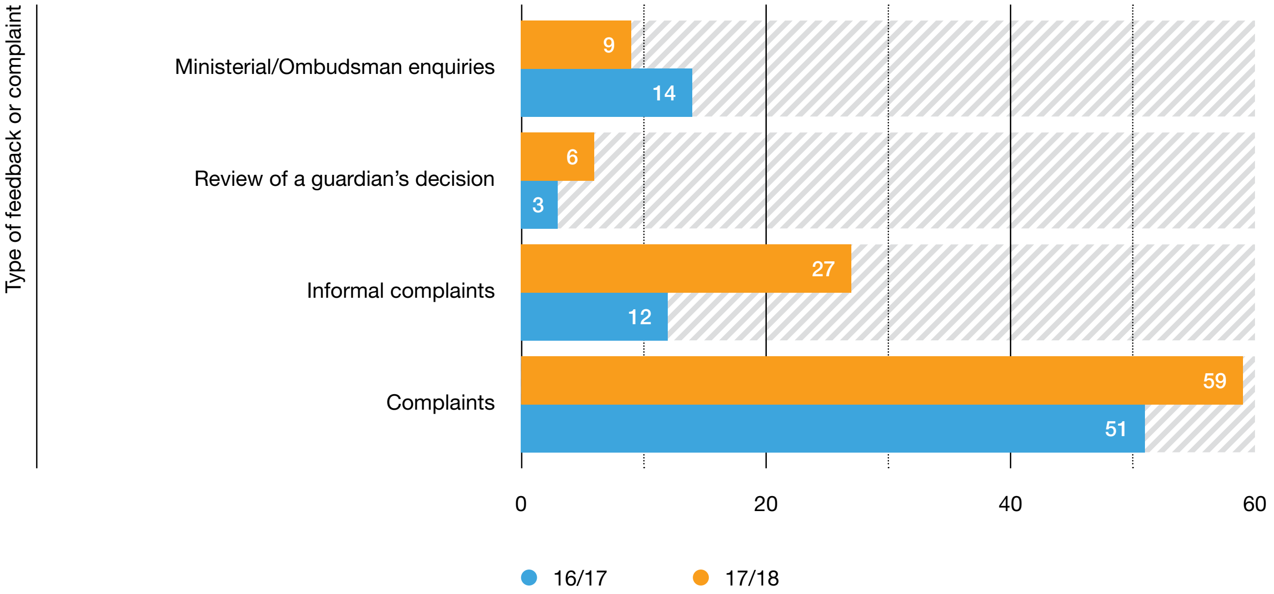


Figure 8. OPA feedback and complaints by type, 16/17–17/18

decisions, however, of these, three were not proceeded with (two were withdrawn and one complainant was satisfied after receiving a Statement of Reasons). In two cases, the original decision was sustained and one case was still pending.

Next year, the organisation will integrate feedback and complaints data into the Resolve case management system. OPA's complaints procedures will also be reviewed to see how they may improve responsiveness.

101

matters reviewed

6

requests for a review of a guardian's decision

At a glance

Communications Unit

Publications

OPA's Communications Unit helps fulfil the function of the Public Advocate to promote informed public awareness and understanding of the law dealing with or affecting people with disability.

It does this through the development of a range of tools and products to the Victorian public and playing a critical role in assisting the advocacy work of the office through strategic media relations.

This year, the two-person unit oversaw the production and updating of 52 publications including information guides, fact sheets, brochures, forms and posters.

The implementation of the MTPD Act had a major impact on the workload with 26 publications created or updated as a result.

In addition, significant work was undertaken in developing an app for health practitioners to assist them determine the correct pathway for a patient who is unable to consent to proposed medical treatment.

Other new publications included the guide, *Supported Decision-making in Victoria*, developed as part of OPA's commitment to supporting the right of people with disability to have input into the decisions that affect them.

The guide was supported by a brochure distributed to all Victorian councils and through Victoria Legal Aid.

The unit also facilitated the production and distribution of a *Guide to NDIS decision-making*, outlining when and how a decision can be made by, with, or for an adult with significant cognitive disability.

Increased demand

This year, OPA, through its long-term partnership with Victoria Legal Aid, distributed 179,102 publications – almost twice as many as last year.

This included 75,501 copies of *Take Control*, OPA's flagship publication incorporating information and forms for enduring powers of attorney and, since 12 March 2018, advance care directives and appointing a medical treatment decision maker.

Other popular publications included:

- *Your voice – Trust your choice*: Tips for seniors making enduring powers of attorney (24,392)
- brochures relating to appointing a medical treatment decision maker (13,547), making an advance care directive (12,623) and appointing a medical support person (8863).

Brand refresh and design

With the updating and creation of new publications associated with the implementation of the MTPD Act, the unit took the opportunity to refresh OPA's corporate look and feel.

Online

This year also saw a surge in demand for information online, with 233,909 unique visitors to OPA's website, a 23 per cent increase on last year

As in previous years, more than half of all visits to the website were in relation to powers of attorney.

In line with the Victorian Government's Digital First Strategy, all of OPA's publications are now available online. This year, website reporting enhancements showed that 92,874 documents were downloaded including:

- 20,423 enduring power of attorney appointment forms
- 8914 enduring power of attorney appointment forms (long version)
- 8888 *Take Control* (which includes the enduring power of attorney forms).

Online forms

To facilitate work relating to the new role of the Public Advocate under the MTPD Act, the unit developed and deployed two online forms for health practitioners. These easy-to-use forms reduce the risk of important information being omitted and automatically send a time-stamped email of the contents to OPA's Medical Decisions Team and the person submitting the form.

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 of HTML as well as a PDF, and a number of documents are available in Easy English.

Media

As part of the organisation’s systemic advocacy, the unit continues to work with local and mass media to raise awareness of both OPA’s work and ongoing issues for people with disability and their carers.

This resulted in several major articles on issues including ‘Sexual abuse in Victoria's mental units is bad and getting worse’ (*The Age*), and ‘NDIS failing jailed Vic woman: report’ (AAP syndicated Australia-wide).

There were also a significant number of articles relating to elder abuse, making powers of attorney and the important work of OPA’s Community Visitors.

Many of these articles were syndicated nationally, with OPA’s media monitoring service advising a potential reach of 134 million.

The unit issued 16 media releases this year, twice as many as last year, reflecting the productive year of the whole office.

Promotion by stakeholders

The unit also focussed on building relationships with stakeholders including Carers Victoria, Victoria Legal Aid, DARU and DJR Strategic Media team. This led to the promotion of new OPA resources and information to targeted audiences via these stakeholders' websites and newsletters.

Internal communications

The unit plays a crucial role in keeping OPA staff informed about the activities and achievements of the various parts of the office, as well as promoting a unified approach to the organisation’s work.

This includes producing a daily all-staff email, as well as maintaining and continuously improving an active intranet portal.

The unit also participates in staff-recognition activities, preparing certificates and awards, whole-of office messaging and speeches for the Public Advocate.

As in previous years, the unit has run a Koori Film Festival for staff to increase awareness of Indigenous Australia in line with the KIAP, and contributed to other internal activities including national and international days of significance to the sector.

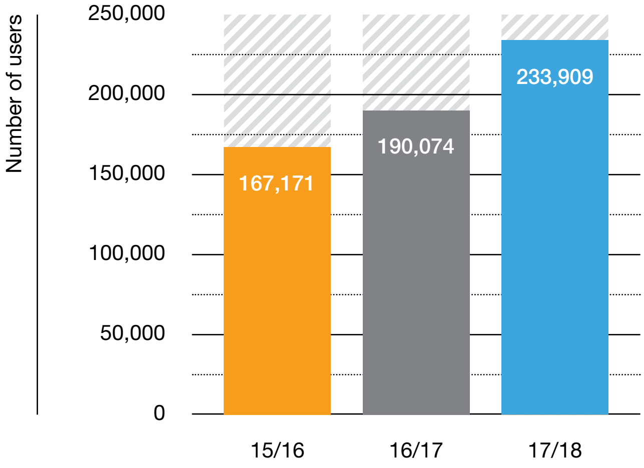


Figure 9. Number of OPA website users, 15/16–17/18

Events

The unit coordinated and organised a number of events this year, including the launch of OPA’s *Guide to Supported Decision-Making*, and the presentation of the Public Advocate’s Award to Amaze.

At a glance

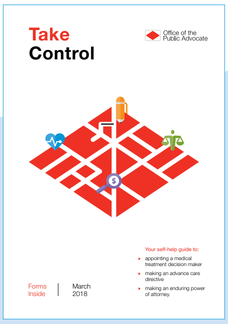
233,909
website users

52
publications

179,102
publications distributed

16
media releases

92,874
documents downloaded



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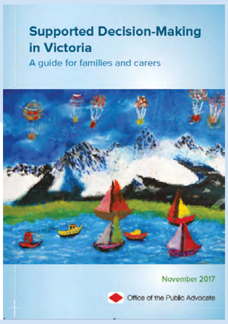

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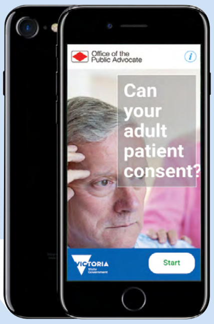

5.

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1. Demand for *Take Control* increased 25 per cent over the past year.
2. OPA's new suite of brochures, updated to take into account changes associated with the implementation of Medical Treatment Planning and Decision Making Act.
3. *Supported Decision-Making in Victoria: A guide for families and carers*.
4. OPA's presentation on the new Medical Treatment Planning and Decision Act is now available to view on YouTube.
5. The front page of OPA's new Patient Consent app for health practitioners.

Corporate Services

Corporate Services include human resource management, financial management, information technology and communications, reception, purchasing, accounts receivable, motor vehicle fleet management, accommodation, maintenance and records management.

Human resources

OPA employed 99 staff of whom 33 worked part-time.

Adjusting for part-time staff, OPA had an effective full-time equivalent of 84 staff.

OPA's payroll services function transferred to DJR People and Culture Division at the end of September 2017.

The staff induction process provided new staff with an appropriately paced induction to all OPA functions, including meetings with the Public Advocate, managers and supervisors, copies of all forms required to commence employment and ready access to information in hard copy or via the office or DJR intranet services.

During the year, the unit experienced some significant workload demand and increases to meet OPA's workforce growth.

The Management and Staff Consultative Committee, which meets bi-monthly, continued to work effectively within its terms of reference to address issues relating to structure, introduction of new technology, changes to existing work practices and health and safety. The committee's major focus areas during the year were OPA's organisational structure and health and safety.

The committee also supported the OPA Health and Wellbeing Program, which comprises a wide range of information sessions on health and wellbeing, diet and exercise presentations and access to influenza vaccinations. The program was well-supported by staff who also raised funds for yoga sessions, neck and shoulder massages and social functions.

The unit continued to facilitate elected and management-appointed health and safety representatives, provided ergonomic assessment of workstations and trained staff in evacuation and emergency procedures. An Employee Assistance Program was offered through OPTUM.

The staff incident/notification process recorded seven incidents during the year relating to threats or actual harm to staff. Five incidents related to advocate guardian matters, one to a Community Visitor matter and one was building-related. One incident was reported to the police.

IT and communications

During the year, OPA increased its networked laptops, enabling staff to access the complete DJR Justice IT network from any external location without the need for access tokens.

The unit provided ongoing training, technical support and programming services for users of the Resolve case management system and other office databases to maintain or enhance system functionality, reporting and ease of data entry.

All OPA multi-function devices and printers were replaced.

A secure database of staff mobile phone numbers was developed to enable emergency SMS broadcasts to staff.

A number of Resolve case management system upgrades were implemented during the year.

Significant changes were made to Resolve and the Q-Master phone system to accommodate new processes as a result of commencement of the MTPD Act in March 2018.

Work was completed on a replacement Independent Third Person database with the new system successfully going live in February 2018 and all financial year data entered by the end of May 2018.

A major file-archiving project was undertaken during the year, resulting in over 1000 boxes of files being sent to either the Public Records Office Victoria (PROV) or a secondary storage site and destruction of over 4000 files in accordance with the PROV Schedule of Destruction.

Financial report for the year ended 30 June 2018

Table 11. Comprehensive operating statement for the financial year ended 30 June 2018

Continuing operations	Note	2018 $'000	2017 $'000
Income from transactions			
Output appropriation		9,971	9,976
Grants	1	2,528	2,410
Other income	2	191	161
Total income from transactions		**12,690**	**12,547**
Expenses from transactions			
Employee expenses	3	9,421	8,526
Depreciation and amortisation	4	81	206
Interest expense		9	10
Grants and other transfers		5	5
Supplies and services	5	2,728	2,492
Total expenses from transactions		**12,244**	**11,239**
Net result from transactions (net operating balance)		**446**	**1,308**
Other economic flows included in net result			
Other gains (losses) from other economic flows	6	(31)	86
Total other economic flows included in net result		**(31)**	**86**
Net result		**415**	**1,394**

Note 1: Increased grants reflect a decision by the Department of Health and Human Services to provide funding to establish the criteria for making referrals of abuse and neglect from the Community Visitors Board to the Disability Services Commissioner.

Note 2: The increased funding reflects a decision by three health services (Monash, Eastern and Alfred) to fund provision of additional guardianship services in the hospitals.

Note 3: Growth reflects new appointments relating to implementation of the Medical Treatment Planning and Decisions Act (MTPDA) and referrals to the Disability Services Commissioner.

Note 4: Depreciation and amortisation costs have reduced due to case management software and leasehold improvements being fully amortised in the previous year.

Note 5: Cost increases relate to implementation of the MTPDA.

Note 6: This reflects an adjustment to the provision for long service leave during 2017-18. This is a non-budget adjustment and has no impact on OPA's annual appropriation budget.

At a glance

1000 boxes

of files delivered to Public Records Office

HR for

99 staff

Supporting diversity

People with disability

OPA's *Disability Action Plan 2015-2018* (DAP) met its requirements in the third year of its operation under section 38 of the Disability Act.

These are:

- reducing access barriers
- promoting employment
- inclusion and participation of people with disability
- promoting positive attitudes towards people with disability.

The plan has seven strategies, most on track. Achievements this year included:

- gaining Scope Victoria Communication Access accreditation
- providing graduate internship for a person with disability
- consulting people with disability on development of OPA's *Strategic Plan 2018-2021*
- offering AUSLAN classes to OPA staff.

A new three-year plan will be developed by the end of 2018.

Koori inclusion

This year, OPA developed its second Koori Inclusion Action Plan (KIAP), building on the work of the first KIAP (launched in July 2015).

Achievements this year included:

- ongoing work of the KIAP committee committed to strengthening the inclusion of Koori communities and culture in the work of the office
- ongoing collation of data on OPA's interactions with the Koori community to better inform service delivery
- the launch of the 'Your life, your choice' project resources

1.

- ongoing development of an internal practice guide for use by all OPA staff providing services to Aboriginal people and their communities in Victoria, in consultation with a number of Aboriginal and Torres Strait Islander people
- celebrating significant events in the lives of Aboriginal and Torres Strait Islander people, including NAIDOC week, Reconciliation Week, Sorry Day, and OPA's own third annual Koori Film Festival.

People with Cultural and Linguistic Diversity

OPA's *Cultural Diversity Plan 2016-2018* has seven strategies. Most are on track, with some in progress.

Achievements this year included:

- redesigning OPA's phone pathway so an interpreter can be requested immediately
- updating OPA's Practice Guideline on Working with CALD Communities
- celebrating Harmony Day 2018 by inviting an artist who had migrated to Australia to address staff on migration challenges and opportunities
- commencing OPA's next CALD plan, which will be evidence-based and continue to improve OPA's response to CALD communities.

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1. OPA's DAP committee (from left): Brandon Tomlin, Scope communication access assessor; Acting Public Advocate, John Chesterman; Michelle Browning, OPA Supported Decision Making Coordinator; Emma Ascher, Disability Action Plan champion 2017; Katie Lyon, Scope Communication and Inclusion Resource Centre manager; Natalie Tomsas, Senior Policy and Research Officer, with the OPA-awarded Communications Access Symbol.

Public Advocate Awards

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 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 Geelong artist Adrian Segon for his painting, Adrian's House.

The Public Advocate said Adrian's artwork immediately drew her in.

Where most people use words to communicate, Adrian, who is autistic, uses his art. Patterning, intricate detail and his emotive use of colour produce a vibrancy that gives life to Adrian's beautiful works.

The Public Advocate said: "I've noticed that many artists with disability choose the subject matter of a house to express themselves and I believe this is a very telling choice. For many Victorians with disability, their residence is not the home it should be and, perhaps, it gives rise to an unrequited yearning for home."

Public Advocate's Award

The annual Public Advocate's Award recognises an organisation making a real difference in the lives of people with disability or mental illness.

The 2018 Public Advocate's Award was presented in June to Amaze, the peak body for people on the autism spectrum and their supporters.

Amaze raises awareness and influences positive change for people on the autism spectrum and their families/supporters and provides independent, credible information and resources to individuals, families, professionals, government and the wider community.

As part of the award, Amaze received an artwork created by Adrian Segon, recipient of the 2017 Public Advocate's Art Prize.

The Public Advocate said that it was a particularly apt artwork to present to Amaze.

"Adrian is a lived example of someone with autism who has been able to exercise his own choice to participate meaningfully in, and make a valued contribution to, our society."

In November 2017, the 2017 Public Advocate's Award was presented to Scope's Communication and Inclusion Access Centre for their work to create a world where people who have communication difficulties are able to communicate successfully with everyone.

Numerous businesses and organisations, including V/Line and OPA, have been accredited with the Communications Access Symbol. This symbol indicates:

- staff are welcoming and treat everyone with dignity and respect
- staff are able to communicate successfully with people with communication difficulties
- communication tools are available to help people get their message across and understand what people are telling them.

Victoria Police

The Public Advocate recognised police members demonstrating outstanding service to people with disability at an awards ceremony at the World Trade Centre on 1 December, 2017.

The ITP-nominated awards went to Box Hill Police Station and Bendigo 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 Sergeant John Hollis from Transit East 2, Oakleigh Police, for his invaluable assistance and support to a person experiencing frequent mental health issues in the community.

Sergeant Hollis' intervention led to a dramatic improvement in the person's mental health and significant decrease in behaviours of concern.

The community-nominated award (individual) went to Senior Constable David Grealish who provided outstanding care and support for a female client with severe intellectual disability, multiple mental health diagnoses and a substance abuse disorder.

The community-nominated award (team) went to the Melbourne Sexual Offences and Child Abuse Investigation Team which undertook a protracted investigation into child abuse at an education facility. This involved interviewing ten victims who were deaf and non-verbal, most of whom had cognitive disability.

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Special commendations were presented to:

- Detective Senior Constable Jen Beha, Sale Sexual Offences and Child Abuse Investigation Team
- Natale Cutri, chair and founding member of the Employee Accessibility Advocacy Network
- Detective Sergeant Tony Breen, Family Violence Command
- Inspector Adrian Richards, People Development Command
- Senior Constable Stuart Deitz, Box Hill Police
- Knox Sexual Offences and Child Abuse Investigation Team
- Victoria Police Soccer Club
- Workforce Diversity and Inclusion Unit
- The Autism Safety Strategy, Eastern Region.

Ben Bodna Award

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

This year, the award was presented to Assistant Commissioner Tess Walsh.

Among her many other roles, Assistant Commissioner Walsh chairs the Victoria Police Disability Portfolio Reference Group.

This group, which includes representatives of peak disability bodies and community organisations, provides advice, expertise and feedback to assist Victoria Police in its engagement with diverse communities.

Members of the group told OPA that Assistant Commissioner Walsh supported and encouraged them to speak freely and openly about the impact disability had on day-to-day life.

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1. *Adrian's House*, winner of the 2017 Public Advocate's Art Prize.
2. Adrian Segon with his Public Advocate's Art Prize certificate.
3. Victoria Police Awards, Sergeant John Hollis (left) with Acting Chief Commissioner, Andrew Crisp (right).
4. Victoria Police Awards. Pictured (from left): Assistant Commissioner, Tess Walsh; Acting Chief Commissioner, Andrew Crisp; Amanda Lawrie-Jones, HR Professional and Senior Disability Consultant; Deputy Commissioner, Wendy Steendam; (then) Acting Public Advocate, John Chesterman.

Snapshot

Office of the Public Advocate

Provides leadership, oversight and strategic advocacy at the highest level of government and with other organisations. Includes the Communications Unit which manages internal and external communications.

Staff

Total: 5

EFT: 4.8

Activities

- 233,909 website users
- 92,874 documents downloaded
- 179,102 publications distributed
- 52 publications
- 16 media releases

Advocacy and Adult Protection

Managed under two groupings: Advocate Guardianship Protection, and Advice and Response. Advice and Response includes the Advice and Education Service, the Medical Treatment Team and the Investigations Team. The Advocate Guardian Program provides guardianship and advocacy services.

Staff

Total: 62 (41 Advocate Guardian Program)

EFT: 54 (36.1 Advocate Guardian Program)

Activities

- 963 new guardianship matters
- 1806 guardianship matters
- 389 investigations
- 159 medical treatment decision applications
- 99 medical treatment decisions
- 162 short-term advocacy and individual advocacy
- 11,752 instances of advice provided
- 138 community education presentations to 6180 people

Safeguarding, Inclusion and Volunteer Programs

Supports 670 volunteers who provide support for people with disability or mental illness across Victoria.

Staff

Total: 14

EFT: 10.7

Activities

- 427 Community Visitors conducted 5225 visits
- 9587 advocacy actions
- 192 ITPs attended 2537 police interviews
- CISOs attended 297 prison Governors' Disciplinary Hearings

Systemic Advocacy

Advocates for public policy and legislative reform, and provides research and submissions to inquiries.

Staff

Total: 4

EFT: 2.6

Activities

- 13 submissions
- 7 speeches/public hearings (preparation of Public Advocate)
- 6 public presentations
- 3 reports/publications

Legal

Provides advice, education and casework services to all OPA programs.

Staff

Total: 5

EFT: 4.7

Activities

- 397 cases
- 242 matters relating to NDIS
- 84 hearings
- 158 Disability Act Officer advocacy cases
- 33 matters relating to Notice to Vacate accommodation
- 42 external presentations
- 18 internal training presentations

Feedback

The Quality and Audit Unit assists OPA in meeting its legal obligations and commitments to relevant Victorian and Australian laws and codes.

Staff

Total: 2

EFT: 1.6

Activities

- 101 matters reviewed
- 59 formal complaints
- 27 informal complaints
- 9 Ministerial and Ombudsman enquiries
- 6 requests for a review of a guardian's decision

Corporate Services

Supports the logistical running of the office and volunteer programs.

Staff:

Total: 7

EFT: 5.6

Activities

- $12.690 million in funds
- HR for 99 staff
- IT for OPA staff and Community Visitor Regional Convenors
- 1000 boxes of files to the Public Records Office
- destruction of 4000 files in accordance with Public Records Office schedule
- replacement of the Independent Third Person database

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