



Office of the Public Advocate

Safeguarding the rights and interests of people with disability



Submission to the Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability

A response to the discussion paper on culturally and linguistically diverse people with disability

August 2021

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The Public Advocate has approved this submission. It is a public submission.

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Recommendations

Recommendation 1

State and Territory Governments should fund cultural awareness training, designed by or co-designed with culturally and linguistically diverse organisations and their communities, for mainstream health and community services.

Recommendation 2

The Australian Government should review the residency requirements for the National Disability Insurance Scheme in situations where refugees or migrants have acquired a cognitive impairment through accident, illness, or other misadventure, to enable access to the scheme on compassionate grounds.

Recommendation 3

State and Territory Governments should implement recommendation 14-1 of the Australian Law Reform Commission Elder Abuse - A National Legal Response Final Report:

Recommendation 14 - 1: Adult safeguarding laws should be enacted in each state and territory. These laws should give adult safeguarding agencies the role of safeguarding and supporting 'at-risk adults'. ¹

¹ Australian Law Reform Commission, *Elder Abuse – A National Response: Final Report*. Sydney, The Commission, 2017, p.377.

Abbreviations

CISO	Corrections Independent Support Officers
CALD	Culturally and Linguistically Diverse
ITP	Independent Third Person
NDIS	National Disability insurance Scheme
OPA	Office of the Public Advocate

1. About the Office of the Public Advocate

The Office of the Public Advocate (OPA) is a Victorian statutory office, independent of government and government services, that works to safeguard the rights and interests of people with disability. The Public Advocate is appointed by the Governor in Council and is answerable to the Victorian State Parliament.

The Public Advocate has seven functions under the *Guardianship and Administration Act 2019* (Vic), all of which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect, and exploitation. To this end, OPA provides a range of critical services for people with cognitive impairment or mental illness, including guardianship, advocacy, and investigation services. In 2019-20, OPA was involved in 1792 guardianship matters (950 which were new), 430 investigations, and 284 cases requiring advocacy.² In recent years, the profile of its clients has begun to change. As in previous years, the complexity of cases remains a key feature of guardianship matters, each of which has multiple dimensions ranging from complex disability presentations and service provision arrangements to complex family dynamics. A key contributor to this increasing complexity is the introduction of the National Disability Insurance Scheme (NDIS), and the interface with the justice system, in addition to the lack of appropriate and accessible housing for people with complex and challenging support needs.

A key function of the Public Advocate is to promote and facilitate public awareness and understanding about the *Guardianship and Administration Act 2019* and any other legislation affecting persons with disability or persons who may not have decision-making capacity. To do so, OPA supports a full-service communications function with 120 publications in print or PDF, a website attracting over 200,000 visitors a year and strong media relations. It also operates an Advice Service which provided 12,624 instances of advice last financial year. OPA also coordinates a community education program for professional and community audiences across Victoria to engage on a range of topics such as the role of OPA, guardianship and administration, and enduring powers of attorney.

OPA is supported by more than 700 volunteers across three volunteer programs: the Community Visitors Program, the Independent Third Person Program (ITP Program) and the Corrections Independent Support Officer (CISO) Program. The ITP Program is an on-call, state-wide service operating in all police stations in Victoria. ITPs assist persons with cognitive impairment when making formal statements to Victoria Police. In 2019-20, ITPs attended a total of 3718 interviews. CISOs are experienced ITPs who support prisoners who have an intellectual disability at Governor's disciplinary hearings at Victorian prisons and/or remand centres. Between July 2017 to March 2020, CISOs attended 254 hearings at seven Victorian prisons.

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability or mental illness. They monitor and report on the adequacy of services provided in the interests of residents and patients.

² Office of the Public Advocate, *Annual Report 2019-20*. Melbourne, OPA, 2020.

They ensure that the human rights of residents or patients are being upheld and that they are not subject to abuse, neglect, or exploitation. In their annual report, Community Visitors relate their observations on the quality and safety of the services they visit and make recommendations to the Victorian State Government. More than 400 Community Visitors visit across three streams: disability services, supported residential services and mental health services. In 2018-19, Community Visitors made 4142 statutory visits, including to sites of criminal and civil detention.

2. OPA's Engagement with this Royal Commission

OPA is pleased to make a submission to the Royal Commission on Violence, Abuse, Neglect and Exploitation of People with Disability in response to the issues paper on culturally and linguistically diverse (CALD) people with disability.

OPA welcomes the continued opportunity to contribute to this Royal Commission. The Public Advocate and two Community Visitors appeared as witnesses before the Royal Commission at its December 2019 hearings in Melbourne to speak about violence in group homes. In November 2019, OPA released a report, *I'm too scared to come out of my room*, that was submitted to the Royal Commission in response to the Group Homes Issues Paper. OPA has contributed additional submissions on the following topics:

- Health care for people with cognitive disability
- The Criminal Justice System
- Emergency Planning and Response
- Restrictive Practices
- Rights and Attitudes
- Employment
- Violence and Abuse in People's Homes
- First Nations People with Disability (with Connecting Home).

3. OPA's Involvement with Culturally and Linguistically Diverse People with Disability

OPA's involvement with people with disability from CALD backgrounds and their families occurs in a variety of ways through its various programs and services. These include:

- Advice Service
- Advocate Guardians

- Communications
- Community Education
- Community Visitors
- Independent Third Persons
- Legal Unit
- Systemic Advocacy.

In line with OPA's *Cultural Diversity Plan 2019-2022*, eight community education sessions were targeted to CALD communities providing information on guardianship, enduring powers of attorney, supported decision-making and medical treatment decision-making. In the same financial year, OPA recorded 145 separate instances of using language interpreters across 21 different languages. These figures illustrate the range of languages spoken in households from CALD backgrounds with which OPA has engaged as guardian of last resort. These languages include those from the larger more established communities who settled in Australia after World War II, such as the Greek (21) and Italian (25) communities, who are now ageing, as well as the languages of more recent arrivals from the Middle East (for example, Arabic (22) and Asia (for example, Mandarin (13) and Vietnamese (13)).³ As would be expected, people with disability from CALD communities follow the typical migration patterns of migrants to Australia.

In addition, information about powers of attorney, guardianship and administration, medical treatment and future planning is available on the OPA external website in 17 of the most common community languages.

4. About this Submission

4.1 A Human Rights Approach

This submission applies a human rights approach that:

- 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
- recognises that most challenges experienced by people with disability are a result of disabling systems and environments, rather than being due to an inherent 'lack' in the individual
- considers impairment as an expected dimension of human diversity

³ OPA Internal data.

- seeks for people with disability to be supported and resourced to have the capabilities to lead a dignifying and flourishing life.

4.2 The Data

Many of OPA's clients from CALD backgrounds are over 65 years of age, as previously noted. However, this group will not be the focus of this submission as many of the issues relating to aged CALD people with disability concern the aged care system, which is beyond the scope of this Royal Commission's terms of reference. Instead, this submission will focus on OPA's involvement with CALD people with disability under 65 years of age to illustrate the experience of people with disability from CALD backgrounds, who have arrived more recently in Australia.

OPA is unable to provide de-identified information as qualitative case studies in this submission, which is its general practice, because of the small sample size. Since 2015, OPA was appointed guardian for 127 clients with disability under 65 years of age from a CALD background. Over the last two financial years, 57 of 800 guardianship matters relating to people with disability under 65 years of age involved clients with a CALD background.

A high-level discussion follows of broad issues relating to CALD people with disability under statutory guardianship who have arrived in Australia more recently.

5. Main Issues

Arriving in a strange land, as a migrant or as a refugee can be a challenging and daunting experience. The person may not yet understand the language, history, or customs of their new home. This lack of knowledge can make it difficult to navigate a strange and culturally unfamiliar set of service systems.

Australia has a highly complex bureaucratic social service system, which assumes either a high level of literacy in English, or if not, then a high level of written literacy in one's own native language—which some migrants, especially women, may not have acquired. For refugees these language and cultural difficulties are compounded by the traumatic experiences they have suffered, survived or to which they have borne witness. Sometimes these traumatic experiences can result in permanent disability or a mental illness, which increases the person's vulnerability to abuse, neglect, or exploitation.

OPA has observed that some mainstream health and community services do not understand, and do not have the capability to support the needs of people from CALD communities. For example, in many cases OPA becomes aware of situations of abuse, neglect, or exploitation of people with disability from CALD backgrounds when service providers contact OPA's Advice Service with concerns. It's not uncommon to receive more than the one call about the same situation when the person about whom the concerns are raised is from a CALD background. For example, the Advice Service received multiple calls in relation to one person with a disability from a CALD

background from service providers who were unsure what to do when the person appeared to lack decision-making capacity and was subject to abuse from his wife.

One contributing factor may be that the use of interpreters, while essential, can make it more difficult to build rapport with a person. There may also be cultural dynamics at play that add an extra complex layer to what is already a complicated issue. For example, some people from CALD backgrounds do not want to speak out against their loved ones because it is culturally unacceptable to discuss what happens behind closed doors.

It is critical that health and community services have the necessary skills and confidence to understand and meet the needs of people with a disability from CALD backgrounds. OPA believes that cultural capacity building would help to build the capacity of mainstream services to better support people with a disability. This training should equip them with the knowledge and skills to deal in a culturally sensitive way with people in those communities they support who disclose abuse, neglect, or exploitation.

State and Territory Governments should fund cultural awareness training that is designed by, or co-designed with culturally and linguistically diverse organisations and their communities for mainstream health and community services. The training should be provided by a registered training organisation and be available for all agencies and workers in the health and community sector.

Recommendation 1

State and Territory Governments should fund cultural awareness training, designed by or co-designed with culturally and linguistically diverse organisations and their communities, for mainstream health and community services.

Through referrals from other agencies, OPA also may become aware of people with cognitive disability, who are refugees and/or more recently arrived migrants who either have a disability or who have recently acquired one. These referrals may come from the police, social workers, or public servants, all of whom are aware of OPA's functions to act as a statutory advocate for people with disability or as a guardian of last resort.

Unfortunately, OPA advocate guardians have found themselves in situations where their capacity to assist is extremely limited. This is the case, particularly, if the person is not entitled to Australian Government services, for example, the NDIS, because of their lack of permanent residency or the correct visa.

OPA has been appointed guardian for refugees who have arrived in Australia and are on bridging visas. They come to OPA's attention because through accident, illness, or other misadventure, they have acquired a cognitive disability and require a substitute decision-maker. The person may be eligible for state-based public hospital services but ineligible for rehabilitation services or the NDIS because they do not meet

appropriate residency requirements. The person remains in a Victorian public hospital bed, unable to access the disability supports needed because of their immigration status.

The situation is inequitable because the Victorian Government bears all responsibility for the person's supports. The strictures of the NDIS residency requirements mean that the represented person is denied access to necessary disability supports through no fault of their own. There are few avenues of appeal. Often, all the advocate guardians can do in these situations is act as strong advocates and 'to think outside the square' to find options. For reasons of equity and fairness, OPA would like to see the residency requirements for the NDIS reviewed to cover the needs of these vulnerable people.

Recommendation 2

The Australian Government should review the residency requirements for the National Disability Insurance Scheme in situations where refugees or migrants have acquired a cognitive impairment through accident, illness, or other misadventure to enable access to the scheme on compassionate grounds.

An advocate guardian's authority, which is granted under state-based legislation, has limited currency in the federal sphere where matters related to migration and Australian Government legislation holds sway. OPA advocate guardians can advocate for the represented person who they are guardian for and act as a substitute decision-maker for the Represented Person, within the scope of their state-based guardianship order, but they can only choose from available options.

The rights of the Represented Person to access federally funded services such as the NDIS is limited by federal laws. Newer arrivals with cognitive disability can also be vulnerable to abuse, exploitation, and neglect from members of their own cultural communities, including their relatives, who may want them to act in a way that is contrary to their own will and preferences and sometimes contrary to Australian law. Their lack of awareness of Australian institutions, laws and customs makes the newer arrival with disability vulnerable to these types of abuses. Sometimes relatives engage in this type of behaviour with the best of intentions, but at other times it could be a deliberate act of abuse and exploitation. Australian authorities sometimes bring these situations to OPA's attention.

In these instances, an OPA Advocate Guardian may have the authority in a guardianship order to keep the Represented Person separate from their family, their community and to limit their travel. Such limitations cannot be imposed forever, however, particularly where the Represented Person may have many years of life ahead of them. They may wish to remain within their own community and abide by its customs and traditions. OPA's guardianship orders are protective but they exist in a rights-based framework. They can be renewed, but guardianship orders are not indefinite. Instead, they are intended to be in place only for the minimum time required until a decision can be made, or the order is revoked by the state-based tribunal because the guardianship order is viewed as no longer necessary or futile.

The situation described above points to the limitations of statutory guardianship as a mechanism to deal with the protection of at-risk or vulnerable people who may become isolated or 'fall between the cracks' of government agencies. The Australian Law Reform Commission in its 2017 report on addressing elder abuse, recommended an approach to safeguard and support all at-risk adults, irrespective of age, who currently 'fall through the cracks' (Recommendation 14-10). This approach involves state and territory governments each enacting adult safeguarding laws to empower a new or existing agency with broad investigative, information-sharing and referral powers to support 'at risk adults' to fill this gap.

Recommendation 3

State and Territory governments should implement recommendation 14-1 of the Australian Law Reform Commission *Elder Abuse - A National Legal Response Final Report*:

Recommendation 14 -1: Adult safeguarding laws should be enacted in each state and territory. These laws should give adult safeguarding agencies the role of safeguarding and supporting 'at-risk adults'.⁴

⁴ Australian Law Reform Commission, *Elder Abuse – A National Response: Final Report*. Sydney, The Commission, 2017, p.377.