Office of the Public Advocate

Safeguarding the rights and
interests of people with disability

ANNUAL REPORT 2021

Cover artwork

The Robin is Peeping at Me
by Yvonne Arnott

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Safeguarding people with disability and mental illness

Contents

1 Message from the Public Advocate

The purpose of the Office of the Public Advocate (OPA) is to promote and protect the rights and interests of people with disability and to work to eliminate abuse, neglect, and exploitation.

The COVID-19 pandemic has presented significant and unique challenges to the Victorian community. Those challenges have disproportionately impacted people with disability, highlighting the importance of the safeguarding role that OPA continues to play. OPA was pleased to see, and made submissions to, both the Disability and Aged Care Royal Commissions' inquiries into the impact of the pandemic on people with a disability. The slow rollout of COVID-19 vaccination for people with disability has left some of the most clinically vulnerable people in our community unvaccinated. At the time of writing, many remain unvaccinated and there is a lack of information about the vaccine in accessible formats.

Impact of COVID-19 pandemic

The COVID-19 pandemic continued to impact on virtually all aspects of OPA's work this year. Despite the operational challenges associated with the shift to remote working, my staff were able to meet this challenge. For much of the year, most staff worked from home with a small number of skeleton staff attending the office to enable OPA to continue its vital safeguarding role. They included IT staff, who provided the technological support required to enable others to work from home, and Advice Service staff, who received many calls relating to vulnerable people who were at the risk of neglect due to reduced or closed services.

Some 17 per cent of all requests for a medical treatment decision this year related to the COVID-19 vaccine. OPA developed a vaccine guideline and filmed an information session for health practitioners. These were publicised via the monthly newsletter, *OPA Updates*, and on the OPA website. In addition, a special form was developed for health practitioners requesting the Public Advocate to make a medical treatment decisions relating to administration of the COVID-19 vaccine.

The Guardianship and Administration Act 2019 requires guardians and investigators to have regard to a person's will and preferences, so far as they can be ascertained. This represents a significant paradigm shift from the previous requirement to make decisions based on the 'best interests' of the represented person. Lockdown has presented guardians and investigators with considerable difficulties in ascertaining a person's will and preferences.

Of particular concern has been the impact of the pandemic on prisoners with a diagnosed intellectual disability being able to access Corrections Independent Support Officers (CISOs) during Governors' Disciplinary Hearings. This year CISOs attended 74 hearings for 106 charges supporting 63 clients at four prisons in Victoria – the lowest number of hearings attended since 2009 when the program started. COVID-19 was a contributing factor as Corrections Victoria needed to develop an IT system that allowed remote prison attendance for anyone requiring it, including CISOs.

Remote safeguarding

Restrictions on face-to-face visiting for much of the year again provided significant challenges for OPA staff and volunteers seeking to safeguard vulnerable Victorians. While the technology and processes for remote visiting are now embedded in OPA's day-to-day work and have proven to be more effective than initially expected, they cannot replicate the value of face-to-face interactions. Some people with disability find it very difficult or impossible to communicate without being physically present with the person. Staff and volunteers also found it difficult to fully assess the environment the person was in and their interactions with co-residents and those looking after them.

With the rollout of the COVID-19 vaccine, I can only hope that, by next year, I will be able to report on how OPA is blending the benefits of the technological advances brought forward due to the pandemic with the necessary – and safe – human interactions that are so valuable to all of us.

NDIS

The National Disability Insurance Scheme (NDIS) is a groundbreaking social reform and issues pertaining to it continue to have a significant impact on the work of the office and it is a key area of OPA's systemic advocacy.

This year, there was a 23 per cent increase in NDIS-related enquiries to OPA's Advice Service, including a 67 per cent increase in calls from support coordinators, who were often new to the role and regularly raised concerns about suspected or substantiated abuse, misuse of funds or fraud. Similarly, the NDIS has created a considerable administrative burden for guardians and for OPA's legal team as many NDIS providers require a signed service deed. During the year, 2743 service deeds were completed, an increase of 86 per cent on last year.

Concerningly, some 15 per cent of all new guardianship orders this year were the result of there being no other less-restrictive option to make NDIS decisions for a person with disability. A consequence of this has been a change in the demographic profile of OPA guardianship clients, leading to an increase in the proportion of people with a mental illness or intellectual disability. This administrative use of guardianship is extremely concerning, and OPA is investigating less-restrictive ways in which people with a disability may be able to interact with the scheme, for example, by the use of a statement of support rather than a formal contract.

In addition to this, guardians are required to interact with many more people for each represented person who is eligible for the NDIS and are making more than twice as many decisions for NDIS matters (an average of 5.63) compared with non-NDIS matters (2.7). OPA has not been funded for this additional work.

Of particular concern is that OPA guardians are increasingly undertaking the role of case managers for NDIS clients, trying to source appropriate accommodation and services for people with complex needs in a market-based system when a provider advises they will no longer provide services – often because the represented person has exhausted their available NDIS funding. This has created an unsustainable workload for staff as OPA has not been funded to provide this level of intensive support.

Contributing to reform

The proposed introduction of independent assessments by the National Disability Insurance Agency (NDIA) was one of considerable concern. OPA stood with the disability sector, publishing a position statement that the NDIA should reconsider. This proposal that was entirely at odds with the scheme's promise of 'choice and control'. OPA's submission to the Joint Standing Committee on the NDIS voiced concerns that the assessments would discriminate against prospective participants with cognitive impairment and complex needs. As Public Advocate, I was very pleased when the agency announced that the policy would not be pursued.

Existing safeguarding agencies such as the NDIS Quality and Safeguards Commission are largely complaints-based. I appeared before the NDIS Inquiry into the commission, calling for it to be more assertive in its outreach and monitoring of issues rather than solely relying on a complaints-based system. OPA's submission to the inquiry highlighted, among other things, the important safeguarding role played by Community Visitors.

Safeguarding the rights and interests of people with disability has been at the forefront of OPA's systemic advocacy work this year.

The transition of funding and regulation of most disability services to the Commonwealth with the introduction of the NDIS has made it increasingly difficult for the Victorian Government and agencies such as OPA to safeguard the rights of at-risk adults in Victoria. An increasingly complex web of regulatory agencies at state and federal level have responsibility for the regulation of disability and aged care services, with a growing number of people with a disability are falling between the gaps.

In 2020, OPA was tasked by the Victorian Government to undertake a review of Victoria's current safeguarding laws and systems and provide options to address any gaps as part of its commitments under the *National Plan to Respond to the Abuse of Older Australians*. OPA's confidential advice was provided to government in January. Following this, OPA hosted two national adult-safeguarding roundtables to promote work towards implementation of the plan in other

Australian jurisdictions.

My office called for the adult safeguarding gaps to be addressed, among other things including advocacy funding, in submissions to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The lack of suitable, stable and secure accommodation for people with a disability remains a concern. OPA's submission to, and my appearance before, the Victorian Parliamentary Inquiry into Homelessness, raised the issue of the absence of a provider of last result resulting from the introduction of the NDIS. In the past, the state government filled this role for people with complex needs but now this cohort is at risk of homelessness (and potentially criminalisation) because of their disability.

OPA's Independent Third Person Program plays a critical role supporting people with a disability during their earliest contact with the criminal justice system, providing a rare opportunity for early support and intervention. My office made a submission to the Victorian Law Reform Commission's inquiry, Improving the Response of the Justice System to Sexual Offences, recommending legislating, expanding and adequately resourcing the program.

I was pleased to release a landmark report, *Decision Time: Activating the rights of adults with cognitive disability*, articulating, among other things, opportunities and challenges for law reform as a result of expanding use of supported decision-making. OPA has called for funding to develop supported decision-making practice in a number of submissions and has employed a Supported Decision-making Coordinator for a 12-month pilot period.

In line with a rights approach, OPA's new website was launched this year. It meets the Victorian Government's digital guidelines for AA accessibility under the international standard, WCAG 2.0. This includes minimal use of PDFs, a mobile-friendly design, and an accessible font.

My office has long held concerns about the lack of, or inadequate regulation of the use of, restrictive practices. The OPA submission to the Disability Royal Commission proposed an overarching framework for the regulation and monitoring of restrictive practices in the disability sector that could be extended to other social care settings such as health, in which the use of restrictive practices is common and, yet, there is currently no applicable framework. I was fortunate to be able to raise this topic at the launch of the *Use of Force* report by the Castan Centre for Human Rights Law, Monash University.

Given the disproportionate impact of the COVID-19 pandemic on people with a disability, OPA was pleased that the Disability Royal Commission undertook a public consultation to examine lessons for improving Australia's emergency planning to better accommodate the needs of people with disability. OPA submitted to the consultation and recommended embedding participation and establishing communication pathways, as well as the creation of Scarce Allocation Resource Teams in preparation for a health system resource crisis.

OPA also made a submission to the Royal Commission into Aged Care Quality and Safety on the impact of the pandemic on the aged care sector. The submission focussed on the impact on OPA's performance of its statutory roles, the impact on residents and their families and the ability to access services.

As I reflect on what has, by any measure, been an extraordinary and challenging year, I am reminded of the importance of humanity, and building community. The work of OPA is guided our values, particularly respect, compassion, and inclusiveness. Now, more than ever, we need to work together to foster connections and inclusion to promote belonging, purpose, and wellbeing.

I feel privileged to continue to work with our volunteers and staff and I thank them for their unwavering passion and commitment to make a positive difference to the lives of people with disability. Their willingness to go that extra mile to champion the rights and dignity of the most vulnerable in our community is both commendable and impressive.

I also wish to thank those that have worked with and supported the work of OPA throughout the year. I value your willingness to collaborate on key reform issues. With your assistance, OPA continues to be a powerful voice for a just and inclusive society that respects and promotes the dignity and human rights of all people including those with cognitive impairment or mental illness.

Colleen Pearce
Public Advocate

2 Our values and mission

Respect

We treat everyone equally and with dignity and justice, accept each person's individuality, acknowledge diversity and promote self-determination.

Compassion

We accept people as they are and understand, acknowledge and have empathy for their circumstances.

Inclusiveness

We strive to empower all people to contribute and participate.

Ethical Behaviour

We act at all times in a principled and informed manner, treat people fairly, accept accountability and uphold justice.

Independence

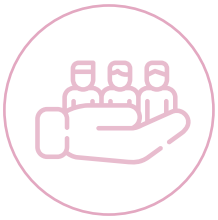
We aim to be free-thinking, unbiased and impartial, and challenge the status quo.

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

OPA's purpose is to promote and protect the rights and interests of people with disability, and work to eliminate abuse, neglect and exploitation.

3 What OPA achieved in 2021

Guardianship



GUARDIANSHIP FOR

1941

VICTORIANS

964 New guardianship matters

2743

NDIS service deeds completed

82%

of eligible guardianship clients were participants of the NDIS

Investigations

425

Investigations conducted for VCAT

Medical decisions

524 **Medical decisions** made for Victorians without capacity to make the decision

81

Medical decisions made about COVID-19 vaccination

Volunteer Safeguarding

3718 visits, made by **394** Community Visitors and **101** trainees

Rights in police interviews of **2621** protected by **166** Independent Third Persons

63 prisoners were supported in 74 disciplinary hearings by Corrections Independent Support Officers

Engagement

251,277 website sessions and **86,042** downloaded documents

120 publications

21,719 distributed

11,619 instances of advice provided

73 education sessions for an audience of **2273**

Advocacy

ADVOCACY PROVIDED 352

5.63 decisions made per matter for NDIS matters, more than twice as many as for non-NDIS matters (2.71)

21 submissions

Provided regular input to

31 external committees and advisory groups

23 media stories advocating for systemic change

4

DECISION-MAKING

Guardianship

Continuing changes and challenges

The current *Guardianship and Administration Act 2019* (the Act) commenced on 1 March 2020.

Central to the new Act of 2019 is the pre-eminence given to the will and preferences of the person under guardianship. While this practice is similar to how guardians have long worked by seeking to give effect to the expressed wishes of the represented person, the emphasis in the new Act brings the right of the person to be involved in decision-making into much greater prominence.

The Act also requires guardians to consider whether a person can be supported to make decisions before moving to make a substituted decision. Personal and social wellbeing decisions can only be made by a guardian when it is not possible to establish a represented person's will and preferences. In addition, will and preferences may only be overridden when it is necessary to prevent serious harm to the person.

OPA undertook substantial preliminary work preparing for the new Act, however, the practical implementation of its new principles of decision-making is continuing to evolve.

Guardianship in a pandemic

The COVID-19 pandemic required a number of significant changes in guardianship practice. In its earlier stages, due to government restrictions, face-to-face visits with represented persons in residential facilities, and with families and providers ceased almost entirely. Only visits in relation to exceptional matters, which could not be resolved in any other fashion, were authorised.

The majority of advocate guardians worked from home supported by the use of technology as were virtually all of those who OPA interacted with and depended on such as NDIS planners, service providers, and support coordinators.

There were, and continue to be, particular challenges in ascertaining will and preferences from represented persons in situations without face-to-face contact.

Towards the end of last year, as restrictions eased, advocate guardians began to resume direct contact with their represented persons. Since then, this opportunity has waxed and waned in accordance with the level of restrictions. While lockdowns have resulted in some positive changes to practice – for example, with most parties now accessible online it became easier for advocate guardians to meet with care teams — this was counteracted by the greater difficulty involved in meeting directly with represented persons.

New matters

The office is required to accept all matters where it is appointed as guardian by VCAT and guardianship continues to be the largest single component of the whole program, which includes investigating and advocacy.

There were 964 new guardianship matters this year, very similar to the 950 last year. With the carryover of existing matters not finalised last year, altogether, OPA was guardian in 1941 matters.

It remains unclear what the long-term impact on guardianship of the new Act will be. While client numbers are broadly similar to last year, capacity to take up new matters may decrease when lockdown is over as it is anticipated there will be greater time demands when face-to-face visits resume. In addition, there may be more applications from the community due to a backlog of matters not progressed during lockdown.

It is difficult to confidently project any trend in the current circumstances.

Table 1: New guardianship matters, 20/21	
Volunteer Community Guardianship	2
Guardianship	942
Temporary/Urgent Guardianship	20
Total	**964**

It is worth noting that, over the last five years, new guardianship matters have been remarkably stable ranging from 950 to 978 a year. Changes relate to demographics of clients and complexity of workload requirements due to the involvement of the NDIS and, possibly, the new Act. The rider to this is the effect of the pandemic, which means caution must be applied to the interpretation of new matters in the last two years.

Guardianship demographics

Changing disability profiles

The last four years have seen a change in the disability profile of individuals referred to OPA.

After many years of decline, intellectual disability (360 new matters) has increased significantly as a proportion of all matters. This relates to the prevalence of this cohort in the NDIS, where they form the dominant grouping.

This trend may also explain the increase in the number of clients with a mental illness as a number of represented persons in the grouping have multiple presentations.

Mental illness as a client disability has risen significantly over the last year to become the largest single category (364) of disability.

Clients with dementia have declined to be the third largest category (309).

Clients with an Acquired Brain Injury (ABI) (235) and physical disability (123) are virtually unchanged from last year.

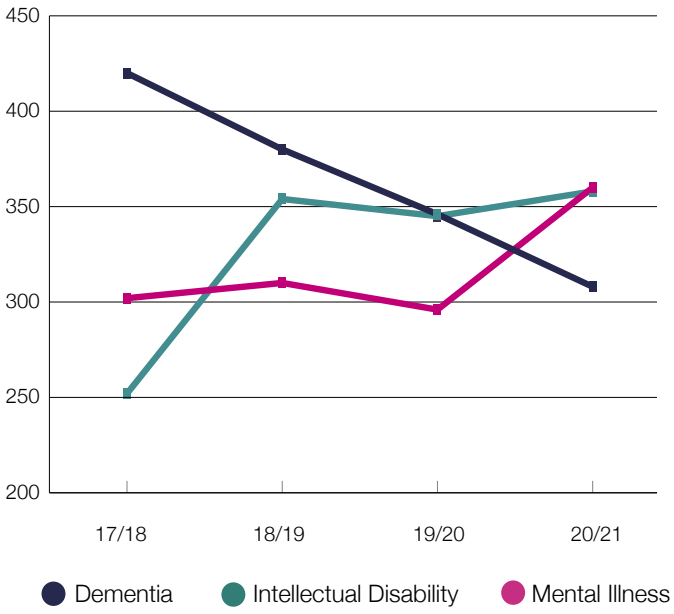


Figure 1. Changing demographic - disability types, 17/18-20/21

Clients' age

The age profile of guardianship clients is that the number of clients with mental illness was remarkably consistent across all age cohorts, while, not unexpectedly, intellectual disability was the largest grouping in the younger cohorts and dementia the largest in the oldest one.

Interestingly, the mix of disabilities in the 65 to 79 age grouping was quite varied at a time when it might have thought that dementia would be a more dominant one.

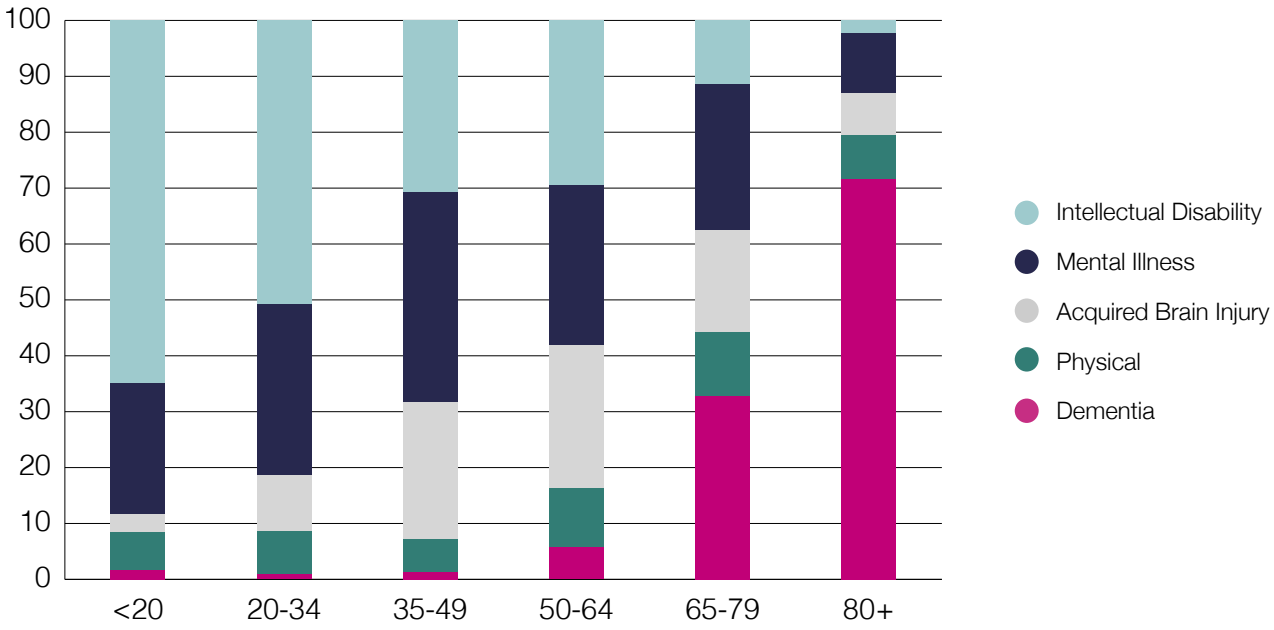


Figure 2. Disability breakdown by age group, 20/21

Waiting list

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

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

There were reduced numbers on the waiting list this year as was last year's trend and the relative stability of the waiting list has allowed OPA to reduce the time to allocate a guardian.

At the start of the year, there were 39 matters on the waiting list. On 30 June 2021, there were 48 matters on the waiting list, which was also the highest number for the year.

Table 2. Average days to allocation of a guardian, 18/19-20/21

Matters	18/19	19/20	20/21
Guardianship, including Community Guardianship	51.48	30.49	23.97
Temporary guardianship	1.9	1.31	1.32

Guardianship issues

Table 3. Top five issues leading to a guardianship order, 20/21

Issue type	Total	%age
Accommodation	694	76.35 %
Service issues, including case management	204	22.44 %
NDIS	136	14.96 %
Health and medical treatment	84	9.24 %
Conflict - family	70	7.70 %

The need for accommodation remains the primary reason for an application for guardianship.

Of note is the strong growth in service issues which include case management and NDIS matters.

By comparison, health and medical treatment reasons, once the second highest category of issues leading to a guardianship application, has declined.

These trends are further evidence of the impact of the NDIS, in general, on guardianship: the lack of a case management function within the NDIS is causing a shift to guardianship as a means of addressing this deficiency.

Complexity and workload

Assessing the complexity of guardianship work is extremely difficult as every matter has multiple dimensions.

These may range from complex disability presentations, to complex service provision arrangements to complex family dynamics. To quantify the impact of complexity on workload, OPA developed proxy measures for complexity based on the number of decisions made, and documents and actions required in an individual matter.

Table 4. Guardianship matters, decisions and actions and documents, 18/19-20/21

	18/19	19/20	20/21
Guardianship matters	978	950	964
Decisions	3019	4035	2926
Actions and documents	129,383	188,192	257,890

The impact of COVID-19 on our work this year makes direct comparisons between previous years difficult, but, regardless, over the last two years:

- guardianship matters have increased by 0.15 per cent
- decisions have decreased by 27.5 per cent
- actions and documents required increased by 37 per cent.

The decrease in decisions can most likely be attributed to the changes in reappointment rates this year. Historically, decisions attributed to reappointments have constituted between 20-27 per cent of all decisions. This year, the percentage was 35 per cent and, in addition, reappointment rates rose overall from the previous average of 25-30 per cent to around 42 per cent.

When a matter goes to reappointment it typically means that a decision is outstanding or only partially completed although the work to get to make that decision remains ongoing - hence the higher number of actions and documents. The higher number of actions and documents also fits with the much higher administrative requirements of the NDIS.

CASE STUDY

The NDIS alone is not enough

Annie's story

Annie, 25, is physically disabled, nonverbal and has a significant cognitive impairment.

The Public Advocate was appointed as her guardian in mid-2020 following an application by her support coordinator. Annie was eligible and had been receiving services from the NDIS.

At the time of the guardianship appointment, she was in a rural hospital following the breakdown of a care arrangement. An early discharge was proposed from the hospital to another rural location, far removed from her local contacts, with only short-term accommodation on offer. This was inappropriate.

There was much liaison with the NDIA, the Department of Families, Fairness and Housing (DFFH) and the local health service.

The guardian provided strong advocacy for Annie to remain in the local area and, fortunately, she was able to engage with the Intensive Support Team and Complex Support Needs Pathway, involvement of which was critical in working to a satisfactory outcome.

Annie was assessed as requiring Specialist Disability Accommodation (SDA) and, in June, this year, the guardian accepted an SDA vacancy in the local area on her behalf.

Even this was not straightforward because it took some six months, and more advocacy, to finally convince the supported independent living provider that Annie would suit their care model.

Without the work of the guardian, Annie would have been relocated far from her home region to an uncertain future.

Although her NDIS plan is comprehensive and appropriate, it was the oversight, advocacy and decision-making of the guardian that enabled it to be truly realised.

Coercive authority

The Act continues to include a provision which allows guardians to request police, ambulance or other service providers, to provide assistance in order to enforce a decision.

In such instances, a hearing must be held and a formal order, now made under s.45 of the new Act, 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, four s.45 orders were made, continuing the trend of a significant decline in such orders.

Table 5. Section 45 orders, 20/21

s.45 order	20/21
Number requiring ambulance attendance transport	4
Number requiring forced entry	1
Number requiring police attendance	4
Number requiring chemical restraint	2
Number requiring physical restraint	0

Continuing NDIS impact

The NDIS continues to be the largest single influence on the workload of guardians.

This impact has increased every year and shows no sign of abating. As was noted above, the structure of the NDIS is such that guardians now find themselves involved with not just the NDIS planner but also with support coordinators and multiple service and accommodation providers.

The following figures are striking: there has been a demographic increase of NDIS-eligible clients, a higher percentage of represented persons who are participants in the NDIS, and a greater number of guardianship matters which involve the NDIS.

This year, again, showed a significantly larger number of decisions required for NDIS participants to achieve an outcome when compared to non-NDIS participants.

Table 6. Growth in both guardianship and NDIS matters, 18/19-20/21

	18/19	19/20	20/21
NDIS Guardianship matters	284	369	521
Percentage of all eligible matters involving NDIS*	58%	72.6%	82%

*Those who are eligible to receive NDIS services. They must be under 65 years of age at the point of accessing NDIS, but they may then continue to receive services after age 65.

Table 7. Number of decision made per matter for non-NDIS/NDIS matters, 18/19-20/21

	18/19	19/20	20/21
Non-NDIS matters	3.5	3.45	2.71
NDIS matters	4.80	4.86	5.63

New complexities

This year, the NDIS rollout has progressively involved more guardianship clients and the involvement has deepened.

The NDIS is a market-based system which means that guardians who have authority for accommodation and service decisions, for example, must make decisions about who will provide these services. OPA has instituted a deeds arrangement (see following) to manage the number of service deeds. The deeds include clauses which allow the termination of support providers. Thus, guardians now find themselves responsible for determining not only decisions about their represented persons but taking active responsibility for decisions about the quality of supports provided. Where a service provider is unable to provide a service to a suitable level, it now falls to the guardian to terminate that service and find another provider. This situation is made more difficult in certain areas, such as specialist support coordination and behaviour support, by a shortage of skilled providers. Decisions about persevering with a particular provider are, thus, not necessarily straightforward.

Anecdotally, participants are experiencing increasing difficulty meeting the NDIS criteria for SDA and the program has queried whether this criteria is, in fact, a cost-saving measure. The NDIS has refuted this and advised that: "Changes to panel decisions have changed as we have aligned the home and living process to ensure that SDA and funded support decisions align to meet the participant's need. This is not related to cost savings, but related to the centralised planning process and consistency".

During the year, some participants waited over eight weeks for their SDA application to be heard by the SDA panel. In June 2021, the NDIS reported that they have since reduced this wait time to ten days.

The complex process of meeting the criteria for Supported Independent Living (SIL) has proven challenging for many guardianship clients and resulted in long waits for this funding. For some guardianship clients, this resulted in homelessness, contact with the justice system, and long and protracted discharge planning from hospital or prison.

More difficult again are situations where a provider advises that they will no longer provide services. Regrettably, this often seems to be when all of the funds of a participant have been expended or where a participant has high-level needs. The program continues to encounter situations where no funds are available to maintain a participant, where support coordinators or service providers are advising they will terminate services and where the only option available is to seek an urgent plan review by the NDIS.

Unfortunately, guardians are increasingly being forced into the role of case manager because there is no one to assume this function which is broarder and more extensive than support coordination. While guardians certainly have the skill level required for this role, the office is not resourced to operate at this intensity and the resultant workload impact on guardians is significant.

Adding to the difficulty in such situations is that there is no effective escalation pathway to the NDIS for guardians who feel they have all responsibility for their represented person but no effective route to prosecute their case.

Service deeds

A major aspect of the administrative work associated with the NDIS is the signing of service deeds as the NDIS requires that contracts be signed for the provision of services. This process is time-consuming but, without a deed, NDIS participants are unable to access the services to which they are entitled.

To streamline this, the OPA Legal Unit developed a formal deed process. It has recently been amended to allow for the rolling over of the deed for up to three years in certain circumstances. Both this arrangement and the establishment of the deed as an online form have substantially reduced the associated workload. It means that separate and individual deeds do not have to be developed each time a service deed is needed. Several other states have either copied the OPA deed or adapted it.

During the year, 2743 NDIS deeds were completed, an increase of 86 per cent on last year. This represented an average of 5.26 service deeds for each client.

Hospital Project

The Victorian Hospital Project builds on a previously successful three-year pilot project. It aims to address health service concerns regarding timely decision-making and discharge planning for patients who have had a VCAT hearing and for whom the Public Advocate has been appointed as their guardian.

OPA aims, through this project, to continue to reduce the time it takes to allocate a guardian for hospital patients and, thereby, reduce the negative effects of extended stays in hospital.

After a transition period from the pilot project in early 2020, from 1 July 2020, OPA employed six guardians from a DHHS grant to cover all 13 health services across Victoria. By 30 June 2021, the Public Advocate was appointed as guardian for 259 people where a hospital, Transition Care Program or other inpatient unit was the applicant.

The average time from when OPA received the guardianship order from VCAT, until a guardian was delegated as the substitute decision-maker varied slightly each quarter but continued to be under 12 business days. The longest wait occurred in the April to June 2021 quarter where it was 11.67 business days. The slight reduction in days

to allocation in the later part of the year reflects, in part, that guardians were finally able to meet face-to-face with the represented person following the easing of restrictions.

During the latter part of the year, the hospital team leader reinstated engagement with hospital networks which had fallen off during the early days of the COVID-19 pandemic. The hospital team leader chairs a forum every eight weeks to share information about the program, allocation timeliness, VCAT, and exploration of practice issues with the lead social workers from the health networks. The hospital team leader also manages a case study practice group every eight weeks where hospital networks are invited to attend a practice forum to explore a case study presented by a health network.

In addition, the hospital team leader will provide resources to the hospital networks about when to make an application to VCAT and what to expect when an application is made. They will also provide additional resources to Victorian Health Services to assist to identify and provide the necessary reports and other documents which will help the guardian make a decision in a timely manner.

OPA expects that this resource will decrease time between the allocation of a guardian and the time that it takes them to make a decision. However, this will not alleviate the current market failure in the provision of appropriate support services and housing for OPA's client with complex issues.

The lack of suitable discharge options continues to frustrate both guardians and hospital personnel as it contributes to substantially longer hospital admissions.

Community Guardianship

The Community Guardianship Program has been a small program within the larger guardianship program comprising volunteers drawn from the community.

Over 30 years, the program gave effect to the Public Advocate's legal responsibility to involve the community in the lives of people with disability; in this case, as volunteer guardians. After induction and training, the volunteers acted as a limited guardian for one or two individuals who were usually resident in the community.

A program coordinator provided advice, supervision and ongoing training.

The core ethos of the program, that of matching a person in the community with the time and commitment to work intensively with a represented person, has proved immensely valuable over the life of the program. However, in recent years, there have been significant challenges in maintaining it. The program has gradually lost volunteers, and providing support and training in a rapidly changing disability environment has proved challenging. A review in 2019 recommended a number of changes of which the majority have been implemented. Despite this, the program has continued to shrink: this year saw 11 community guardians involved with 15 guardianship matters.

Thus, it is with more than a tinge of sorrow that OPA has decided to indefinitely suspend the program. There are a range of factors which have led to this decision. Firstly, with the arrival and full rollout of the NDIS, the current disability environment has become increasingly complex. The office's ability to train and support volunteers in this environment is limited and the consequences of being unable to do so are significant. The pandemic has also complicated the provision of training but would not, of itself, led to the decision to suspend the program.

Secondly, the complexity of the disability environment means there are fewer matters coming to OPA which are reasonable to allocate to a volunteer. Aside from the NDIS, an increasing number of matters involve justice, family violence and litigation. The issues raised and the conflict involved is, from the perspective of the office, an unreasonable task to ask of volunteers.

Finally, there were a range of technical issues related to the maintenance of digital records which are difficult to achieve with a volunteer workforce.

In these circumstances, there seemed no option but to suspend the program. Post-pandemic, OPA will consider whether it redevelops the program in a slightly different format.

For now, it thanks the many Victorians who, over three decades, provided their services free to the community to supplement OPA's paid guardianship workforce with this valued volunteer effort for their clients.

CASE STUDY

The importance of support in NDIS reviews

Vernon's story

Vernon is in his late fifties, has a mental illness and is legally blind.

His original two-year NDIS plan in March 2019 provided support coordination and 15 hours of support each week.

Unfortunately, it was not until late 2020, when his mental health case manager found the plan, that supports were engaged for him. Vernon had been unable to arrange such supports for himself.

While Vernon's circumstances improved, they did not stay that way. A plan review in March 2021 by the local area coordinator (LAC) saw support coordination removed and replaced with a psychosocial recovery coach and nine hours of support a week.

The review, however, did not involve contact with Vernon or his mental health case manager and did not acknowledge the support coordinator's recommendations. It led to a 50 per cent reduction of his support hours, justified on the grounds that, as he only engaged supports in the last six months of the plan, they were unnecessary.

The LAC proceeded with the review because he had been unable to contact Vernon, despite the fact that it was known that the only person Vernon communicated with was his mental health case manager.

A guardian was appointed for Vernon by VCAT in May 2020 following an investigation by OPA. They gained a review of Vernon's NDIS plan, which is expected to occur in August 2021.

In the meantime, the guardian has been able to negotiate support funding back to the earlier level. The previous support coordinator remains in the background, briefed but unable to provide services. The guardian has been forced to assume the role of the support coordinator, perhaps even that of a case manager, because there are no NDIS-funded supports immediately available to fulfil that necessary function.

Regrettably, this is not an uncommon situation.

Investigations

The three-year trend shows a steady rate of new investigations referred to OPA by VCAT.

A record peak of 61 referrals occurred in June. Due to this and the loss of one staff member, a waiting list was needed for less-critical matters.

Due to the ongoing impact of COVID-19, matters involving proposed represented persons in hospital continued to be prioritised.

Table 8: OPA investigations, for VCAT, 18/19-20/21

18/19	404
19/20	430
20/21	425

Table 9: Average days to allocate an OPA investigation for VCAT, 18/19-20/21

18/19	9.8
19/20	11.3
20/21	9.1

Table 10. Top ten reasons for VCAT referring investigations to OPA, 20/21

Issue type	Total	%[1]
Evidence of need for order	192	53.0 %
Evidence of capacity	98	27.1 %
Conflict between individuals	71	19.6 %
Evidence of disability	70	19.3 %
Possible breach of duties by financial attorney	52	14.4 %
Accommodation	39	10.8 %
Possible financial exploitation	22	6.1 %
Possible breach of duties by personal attorney/enduring guardian	21	5.8 %
Welfare and safety at risk	20	5.5 %
NDIS Issues	19	5.2 %
Other	83	22.9 %

1 These percentages do not add up to 100% due to multiple issues for individual matters.

Investigation demographics

Just over 21.48 per cent of investigations were for persons over 65 years of age.

Dementia was the most common disability in matters referred for investigation at 40.4 per cent. The second most common disability was intellectual disability, followed by mental illness.

Table 11. Disability types for OPA investigation for VCAT, 20/21

Issue type	Total	%age
Dementia	160	40.40 %
Intellectual Disability	132	33.33 %
Mental illness	101	25.51 %
Acquired Brain Injury	82	20.71 %
Physical	48	12.12 %
Not specified	23	

Investigation outcomes

Almost one third of the 375 matters completed this year were either withdrawn or dismissed. This confirms that by clarifying issues and providing additional information, investigations divert a significant number of matters which otherwise may proceed to guardianship.

Special medical procedures

Special medical procedures have the effect of rendering a person permanently infertile, terminating a pregnancy or transplantation of tissue. This includes proposed procedures associated with gender reassignment.

There were significantly fewer applications to VCAT for consent for special medical procedures this year. They are also inherently complex and troubling for investigators.

Three special medical procedure investigations were completed this year.

Continuing COVID-19 impact

For most of the last year, investigations continued to be impacted by lockdowns and limited access to persons in supported residential facilities.

The most difficult aspect of investigations continues to be attempting to ascertain the will and the preferences of a person who is subject to emotional, psychological and/or financial abuse by their primary carer. Ascertaining and measuring undue influence and coercion also continues to be a challenging task. Attending hearings by phone and the need to ascertain the will and preferences of a person has possibly contributed to the volume of referrals.

This year, OPA's investigations function again faced challenges associated with retention, recruitment and training of staff, due to short-term contracts that could not be renewed because of budget constraints, and a near-record number of matters referred by VCAT.

The new legislation and matters involving enduring powers of attorney increased the number and difficulty of issues addressed in investigations. Despite these challenges, high quality investigations continued to be provided to VCAT, and an important safeguarding function was maintained.

CASE STUDY

Responding quickly to protect a person with disability

Jack's story

Jack lived with his mother in her unit.

She bequeathed it to Jack in her legal will. Jack has an intellectual disability and his mother cared for him her entire life. Jack learnt to manage simple tasks with support and prompting. Following his mother's death, Jack was induced by a neighbour to sell the property at a price much lower than the median price of similar properties.

Jack changed his mind after settlement of the property. The legal firm which he attempted to instruct to reverse the sale made contact with OPA. Due to COVID-19 restrictions, a welfare check by Victoria Police was requested as well as a medical report from his GP.

An application was made for the appointment of an administrator was made. State Trustees Limited was appointed administrator and worked towards reversing the sale.

Medical decisions

Under the *Medical Treatment Planning and Decisions Act 2016*, the Public Advocate has the authority to make medical treatment decisions for Victorians under certain circumstances. These include where a patient lacks decision-making capacity, has not made an advance care directive, does not have a medical treatment decision-maker, and where it is not emergency treatment.

A direct request to OPA from a health practitioner is submitted via an online form in relation to significant treatment decisions (s.63 or s.62). OPA does not have a role in making routine, emergency or palliative treatment decisions. OPA is also the contact point for health practitioners to submit a copy of a medical research practitioner's certificate (s.81).

Medical treatment decisions

Since the introduction of the Act in 2018, this year saw the highest number of matters (524) come in to OPA, with 58 more than last year.

Requests for the COVID-19 vaccination accounted for 17.3 per cent of new matters this year.

There were a large number of requests (34) where a health practitioner found that the patient in fact had a medical treatment decision-maker. This suggests health practitioners continue to have limited knowledge that a person does not have to be appointed as a medical treatment decision-maker in order to act as one (s.55 of the Act).

Of the 15 matters where the outcome type was 'other', the majority of these related to the Act not being applicable, with the patient being subject to an order under the *Mental Health Act 2014*; or that the treatment was chemical restraint; or that the request did not meet the legal definition of being 'medical treatment'.

Outcome types (other than those where OPA makes a decision to consent or refuse) remain comparable to previous years, indicating there remains a need for widespread education for the health community on legal definitions and medical treatment decision-making processes related to the Act.

Table 12. Comparison of OPA medical treatment matters, 18/19-20/21

Matters	18/19	19/20	20/21
s.62	3	2	1
s.63	455	413	468
s.81	8	13	16
Extension of consent	26	38	39
Total	**492**	**466**	**524**

Table 13. Outcome types of OPA medical treatment decisions, 20/21

Section 62	**1**
Section 63	**468**
Treatment consented to	357
Medical treatment decision-maker found	34
Treatment deemed to be emergency	18
Treatment deemed to be routine	16
Other	15
Offer of treatment withdrawn	14
Capacity regained	6
Treatment deemed to be palliative	5
Treatment refused	3
Section 81	**16**
Legislative requirements met	14
Legislative requirements not met	2
Extension of consent decisions	**39**
Grand total	**524**

Continuing COVID-19 impact

With the ongoing COVID-19 lockdown until October 2020 and then subsequent restrictions and further lockdowns, the pandemic continued to have a direct effect on access to inpatient and particularly outpatient health services, with an eight per cent reduction in outpatient matters and dental matters remaining low.

Notably, there was an 18 per cent increase in medication decision matters this year (such as antipsychotic, antidepressant or benzodiazepine medications), however, COVID-19 vaccination requests accounted for 62 per cent of those.

Distribution of matters

Table 14. Outcomes of OPA medical treatment decisions in relation to COVID-19 vaccination, 20/21

COVID-19 vaccines	**81**
Treatment consented to	62
Treatment deemed to be routine	11
Medical treatment decision-maker found	3
Capacity regained	2
Offer of treatment withdrawn	2
Treatment refused	1

There were slight variations compared to previous years in the top five metropolitan and rural health networks which sought medical treatment decisions.

The metropolitan networks were Alfred Health (54), Western Health (45), Melbourne Health (40), Austin Health (33) and St Vincent's Health (27).

The rural networks were Barwon Health (15), Ballarat Health (11), Bendigo Health (8), Swan Hill District Health (4) and East Grampians Health (3).

It is notable that the two largest rural health networks, Latrobe Regional Health and Mildura Health, did not submit any matters. This may be due to a range of reasons including reduced knowledge of the legislation and, thus, it may be appropriate to offer further education through the primary health networks next year.

Length of time to make decisions

While the OPA medical decisions team remains small (3.5 staff to cover the whole of Victoria), the length of time to make decisions is much the same as last year – approximately 68 per cent of decisions were made within five days, with 32 per cent taking six days or longer.

Themes for next year

There was an interruption to education provision to the health community due to the COVID-19 pandemic. Therefore, it was primarily provided on a case-by-case basis as matters arrived. It is hoped that as the vaccine rollout progresses, the health community can turn its mind to issues other than COVID-19 and education opportunities will resume.

A particular need has been identified to focus on health practitioners' improved knowledge and compliance in assessing and documenting a patient's decision-making capacity, as s.4 and s.56 of the Act requires, and that a patient lacking decision-making capacity does not mean that they cannot express their preferences and values in some way.

The issue of when medication is administered for the purpose of medical treatment or for chemical restraint and, therefore, who can and cannot consent to it, is becoming more stark. It is likely that the recent amendment to the restrictive practice principles in the *Aged Care Act 1997* is contributing to an increased awareness. It is expected that these types of matters will require increased advice and education regarding when medication is a medical treatment decision and when it is not, and, therefore, who can be the decision-maker.

CASE STUDY

Preferences and values in medical treatment decision-making.

Jackie's story

Jackie suffered from renal failure and required dialysis. The access point (a permcath) for her dialysis had blocked and she required surgery to reinsert a new one.

The doctor had assessed that Jackie did not understand or retain the information given to her about the proposed surgery, nor could she demonstrate how she would weigh up that information and, therefore, was not satisfied she had the decision-making capacity for this decision.

While Jackie happened to have an OPA guardian, the guardianship order did not include the authority to make medical treatment decisions; Jackie also had a brother, but the doctor determined they were not in a close and continuing relationship. Therefore, there was no alternative medical treatment decision-maker and Jackie had not made a relevant advance care directive. Consequently, a s.63 form was submitted to OPA for a significant medical treatment decision from the Public Advocate.

An OPA medical treatment decision officer met with Jackie, who expressed two preferences: that she did not want to have surgery to have the permcath reinserted, although she could not articulate her reasons for this; but also that she wanted to have dialysis so that she could return home and to her usual life of seeing her friends, going to TAFE and playing bowls.

The officer had to further consider what values could be inferred from Jackie's life to try and establish whether these would substantiate one of her preferences over the other.

The officer spoke with Jackie's guardian, with doctors who were involved in the initial decision to commence Jackie on dialysis (where she was assessed to have had the capacity to make this decision herself), and with staff from her supported accommodation.

The officer eventually made the decision to consent to the surgery to reinsert the permcath. It was acknowledged that, while Jackie had expressed a preference against this, her preference for dialysis was substantiated by her previous decision to consent to a permcath to commence dialysis at a time she had decision-making capacity; her values of being able to live an active life, live independently at home; and her usual acceptance and engagement in her health.

5

ADVOCACY

Advocacy

Disability advocacy is the practice of standing beside the person with a disability, promoting their rights and interests and, if necessary, working to protect them from exploitation, abuse and neglect.

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

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

New advocacy matters

All forms of advocacy practiced at OPA increased this year:

- overall advocacy matters increased by 23.9 per cent, the largest percentage increase since 2013-2014
- Disability Act officer interventions remain the largest single contributor to OPA individual advocacy, increasing by 30.9 per cent. (There are specific legislative provisions under the Disability Act which affect people with intellectual disability. In particular, OPA has a role in advocating in relation to tenancy and civil detention for this cohort under the Disability Act).

The office continues to provide advocacy for people subject to the *Severe Substance and Dependence Treatment Act 2010* and, as in recent years, this only involved a few individuals. This year, only three matters were referred to OPA for advocacy. These figures are included under individual advocacy in the following table.

Table 15. New OPA advocacy matters, 18/19-20/21

Matter	18/19	19/20	20/21
Individual advocacy	46	58	60
Disability Act advocacy	97	126	165
Short-term advocacy	115	100	127
Total	**258**	**284**	**352**

Individual advocacy

OPA receives many requests for individual advocacy. These come through requests to the Advice Service, VCAT, or external agencies such as Victoria Legal Aid.

Due to resource restraints, OPA triages all advocacy requests and refers them, wherever possible, to agencies within the community sector. OPA continues to provide advocacy in serious matters where other advocacy means are either not available or have proved ineffective. The Advocacy Project (see next page) has been researching how OPA may more effectively triage referrals.

People with intellectual disability are, by far, the largest group receiving advocacy at 51.8 per cent, whereas, clients with intellectual disability only constituted 34.1 per cent of guardianship matters and 24.5 per cent of investigations.

The percentages of OPA's advocacy clientele in other disability categories are: mental illness, 16.2 per cent; ABI, 14.2 per cent; physical disability, 10.6 per cent; and dementia, 7.2 per cent.

People subject to civil detention all fall under the intellectual disability cohort due the requirements of the legislation.

The most common issues leading to a request for advocacy were accommodation (39.1 per cent) and civil detention (18.4 per cent).

Short-term advocacy

OPA also provides short-term advocacy.

More than just advice, short-term advocacy involves advocating on a matter for a limited period of time, usually no more than half a day, to assist in providing an outcome to a very specific matter.

On occasions, it may involve a one-off meeting with the person or an agency. If it is apparent that a matter cannot be resolve by means of a brief intervention, OPA will consider whether it should be referred to individual advocacy or possibly an external agency. Short-term advocacy is undertaken across many different program areas within the office.

VCAT liaison

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

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

This year, due to COVID-19 restrictions, VCAT hearings were held remotely.

The liaison officer also worked remotely but was able to continue, albeit at a reduced capacity: there were 314 liaison officer interventions compared with 481 the previous year. In addition, there were six individual advocacy matters undertaken by the VCAT liaison officer this year.

Advocacy project

As foreshadowed in last year's annual report, this year, OPA undertook a detailed review of its advocacy service model.

The objective was to develop a cross-program advocacy model informed by legal and philosophical changes to the service and regulatory environment that pertains to disability services with the operation of the NDIS, and comparable changes that are occurring in the aged care service and regulatory environments.

The model incorporates changes to OPA's advocacy practices required by amendments to the guardianship legislation which adopts a 'will and preference' paradigm for advocacy undertaken by OPA.

It provides clarity about OPA's advocacy role in the current regulatory environment, incorporating rights-based principles and guidance on advocating on behalf of people with a disability. The model embeds systems for principled and consistent decision-making in respect of the allocation of resources, recording advocacy work and measuring the impact of that work.

The review resulted in 16 recommendations to implement a new cross-program advocacy model, some of which were implemented during the review period. The remaining recommendations will be considered for implementation next year.

Disability Act and Residential Tenancies Act advocacy

Under the Disability Act and the *Residential Tenancies Act 1997*, the Public Advocate has safeguarding responsibilities for people with disability living in two types of accommodation: residential services and SDA where there is an SDA residency agreement in place.

Table 16. Residential notices, 18/19-20/21

Notices received	18/19	19/20	20/21
Notices of temporary relocation	38	14	39
Notices to vacate	6	11	6
Notices of intention to vacate	-	5	11
Other residential matters	-	-	25
Total	**24**	**30**	**81**

There was a significant increase in the issuing of notices of temporary relocation from last year. This marks a return to data equivalent to that prior to the introduction of the SDA residency agreements.

At the same time, there was a reduction in the number of notices to vacate issued. During the period of the operation of the *COVID-19 Omnibus (Emergency Measures) Act 2020*, it was not possible to issue a notice to vacate if the person was in an SDA property. This prohibition did not apply to people with disability living in residential services governed by the Disability Act.

There was a doubling in the number of notices given to SDA providers of the resident's intention to vacate. Of concern was the number given on behalf of the resident by people who had no apparent authority to do so.

There were 25 residential matters where OPA exercised its legislative functions to promote the rights of people with disability and to safeguard them from abuse, neglect and exploitation.

OPA observed significant non-compliance with the legislated requirements. Mostly, this was a result of providers' ignorance of their obligations.

In five matters, residents were moved without notices being issued at all, leaving them, family members, support coordinators, guardians, and OPA scrambling to find secure ongoing accommodation.

With the transition to the NDIS and its market-based model, the securing of accommodation may urgently require a review of the participant's NDIS plan to identify new accommodation opportunities. The absence of the DFFH as a provider of last resort places pressure on a person's support coordinator and the NDIS market to supply options. Unfortunately, the market does not always provide options and homelessness remains a possibility in many situations.

Participants who were in residential services before the transition to the NDIS were considered to have an entitlement to SDA . However, if they leave such accommodation, their entitlement may be lost. As such, there is a pressure to retain the right to entitlement by keeping the residential service option open as long as possible, even though it may be the participant's will and preference to leave.

OPA advocacy aims to promote the person's human rights, independence and to safeguard them from abuse, neglect and exploitation. Under the new Act, the focus is on supported decision-making and will and preferences rather than best interests. During the COVID-19 lockdown, it has been difficult to meet with residents to establish their will and preferences.

One pathway to a new home is to move to a house that is not SDA but managed by a registered NDIS provider. While this may seem attractive, OPA has raised with the Victorian Government its concern about the security of tenure of residents in such accommodation.

Civil detention

OPA provides advocacy to people with intellectual disability who are detained on (or for whom an application has been made to detain on) a Supervised Treatment Order (STO) made under the Disability Act. The purpose of these orders is to provide treatment in a residential setting that will benefit the person and lead to a better, more productive life as well as managing their risk to the community.

Table 17. Civil detention matters, 19/20-20/21	
19/20	**20/21**
38	47

There were 47 civil detention matters this year.

Finding the right residence was an issue for 25 per cent of residents. People on STOs can only live in residential services or SDA-enrolled dwellings where there is an SDA residency agreement.

The transition to the NDIS remains a challenge for the effective operation of these treatment programs. Some of these challenges are:

- the poor alignment of a person's treatment goals with the services available to them from their NDIS plan. The DFFH's intensive support team has provided assistance to remedy this for many residents, but it remains an issue for others
- NDIS providers not being qualified to provide supervision or not adhering to supervision requirements when providing services in the community
- the fragmentation of responsibility for services and treatment between the person's support coordinator, behaviour support practitioner and the treating service's authorised program officer
- responsiveness to residents' needs is slower through the NDIS as an NDIS plan review is required. This may involve extensive assessments that take time to deliver and which require funding. Plans are taking longer to finalise and implement
- authorised program officers' frustration about the greater need for coordination and supervision of a person's services for which they were not funded.

Independent Person Pilot

DFFH funded OPA to perform the role of the independent person to assess its effectiveness.

In this role, a person, who is independent from the person's service provider, explains what restrictive practices are proposed to be used on the person and that they have appeal rights to VCAT. The role also has a safeguarding component to assess if there is compliance with the law.

Through participation in this project, staff met with many people with disability with whom the office would not normally have contact. It afforded an opportunity not only to see how restrictive practices are proposed to operate in people's circumstances, but also to spend time (albeit short) to hear people's aspirations, will and preferences and enjoy their company.

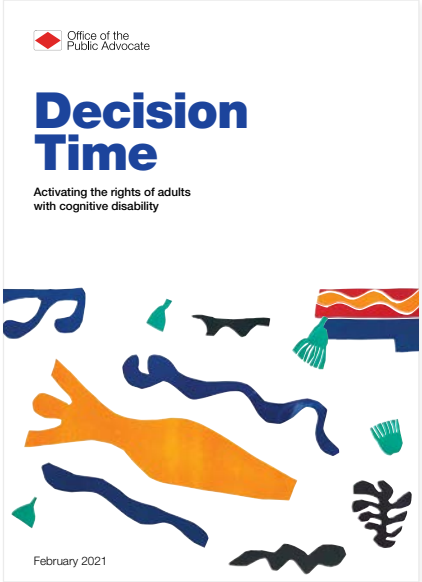
The pilot project is due to report in July 2021.

Systemic advocacy

This year, OPA's systemic advocacy continued to be guided by the reform goals in OPA's current Strategic Plan.

Supported Decision-Making

OPA's landmark report *Decision Time: Activating the rights of adults with cognitive disability* aims to ensure Australia fully meets its United Nations (UN) obligations for people with disability. It achieves this by providing an accessible summary of the various fields in which it has expertise including human rights, guardianship, mental health, advance planning, medical treatment and the NDIS.



Decision Time: Activating the rights of adults with cognitive disability.

The report articulates opportunities and challenges for law reform as a result of expanding use of supported decision-making. It recommends all prisoners entering facilities across the country be screened for cognitive disabilities as well as be supported to understand and participate in their criminal justice journey, receive support services in prison, and be provided with supported housing if found unfit to stand trial or not guilty for reasons of mental impairment. It also recommends that public advocates and public guardians should have powers to investigate abuse, neglect and exploitation, and that changes to laws about decision-making for people with disability reflect what they want — their 'will and preference' rather than their 'best interests' — where this legislative change has not yet occurred.

Funding for, and the development of, supported-decision practice was identified as a critical area of need in many OPA's submissions, including numerous submissions to the Disability Royal Commission. OPA's submission to the Royal Commission into Aged Care Quality and Safety on the topic of how medical treatment decisions are made when a person with cognitive impairment accesses health and allied health services recommended that the Australian Government should fund professional supported decision-making services for consumers who do not have access to informal supports.

Royal Commissions

Violence, abuse, neglect and exploitation

OPA has continued to share its knowledge and expertise with the Disability Royal Commission. It's submission in response to the Royal Commission's Safeguards and Quality Paper emphasised the need for improvements to legislation and operation of the NDIS Quality and Safeguards Commission, a regulatory framework that considers quality and safeguards guided by a human rights approach, and to address gaps (where it is not a police or medical matter) to include at-risk adults.

In OPA's submission to the Disability Royal Commission's issues paper *Violence and Abuse of People with Disability at Home*, the office identified recommendations relating to reform ideas, safeguarding gaps, and the need for OPA and like bodies to have broad investigative powers to include private homes. There is a clear gap in the current ability of government agencies and the health service system to combat abuse of people in private homes. OPA highlighted the need for a pathway through which people can raise concerns about the wellbeing of at-risk adults and young adults. This function needs to be with a body with clear authority to investigate situations of concern in private homes, as well as other settings. These

investigations should take a supportive intervention approach.

In OPA's submission to the Disability Royal Commission's Rights and Attitudes paper, the office recommended that governments, the NDIS and the NDIS commission should continue support for cultural-change training for disability service providers that seeks to counter violence, abuse, neglect and exploitation. Also that government endorse the recommendations from the national evaluation of community visitor programs that human-rights protections be strengthened through the funding of advocacy at all levels as a crucial safeguard, and that the Australian Government implement recommendations of the Australian Law Reform Commission in its 2014 report *Equality, Capacity and Disability in Commonwealth Laws*.

In response to the Royal Commission's issues paper 'The experience of First Nations People with Disability in Australia', OPA made a joint submission with Connecting Home, an independent Aboriginal Organisation supporting survivors of the Stolen Generations across south eastern Australia. The submission made six recommendations and proposed a holistic and person-centred practice framework. It argued that this was key to creating better outcomes; to develop an understanding that is flexible and responsive thus allowing for services and supports to be easily tailored to individual circumstances. Further, the submission noted that lack of culturally safe disability services means vulnerable First Nations people are often re-traumatised when they engage with the NDIS due to systematic institutionalisation of the Stolen Generations.

Regulation of restrictive practices

OPA's submission in response to the Disability Royal Commission's *Restrictive Practices* issues paper made nine recommendations for reform. OPA proposed an overarching framework for the regulation and monitoring of restrictive practices in the disability sector. Application of it could be extended to other social care settings including general public hospital settings, for which no safeguarding framework exists, as well as residential aged care facilities. Strengthened restrictive practice requirements for residential aged care facilities commenced 1 July 2021 following recommendations of the recent Aged Care Quality and Safety Royal Commission final report, a topic covered in OPA's 2019 submission to that Royal Commission.

The Public Advocate was on a panel at the launch of the *Use of Force* report by the Castan Centre for Human Rights Law, Monash University. Dr Pearce spoke about restrictive practices such as chemical restraint and the gaps in their oversight, as well as about the Mental Health Act and the safeguards provided by Community Visitors.

Emergency planning and response

With Australia's worst bushfire season in living memory followed closely by the COVID-19 pandemic, the Disability Royal Commission undertook public consultation to examine lessons for improving Australia's emergency planning and responses to better accommodate the needs of people with disability. OPA recommended embedding participation and establishing communication pathways for disability advocacy groups and people with disability in planning for emergencies. OPA also recommended hospitals create Scarce Allocation Resource Teams in preparation for a health system resources crisis. Such teams would help ameliorate threats to the rights of people with disability to access health services on an equal basis with others during emergencies.

Equitable access to employment

OPA's response to the Disability Royal Commission's Employment issues paper made recommendations for improving employment participation for people with disability, including cognitive disability, such as by the use of 'special measures' provisions in equal opportunity legislation. The submission drew on OPA's Healthy Discussions Project that was co-designed with a self-advocacy group for people with intellectual disability, Reinforce Inc., and demonstrated best practice strategies for employing people with disability.

OPA also worked in conjunction with Reinforce Inc. President, Colin Hiscoe, to present a Better Information webinar on using case studies effectively, organised by the Victorian Law Foundation. The webinar focussed on how to co-design projects effectively using OPA's earlier work co-designing a brochure with Reinforce Inc. that described the experiences of people with intellectual disability in the health system.

Aged Care Quality and Safety

OPA made a submission to the Royal Commission into Aged Care Quality and Safety on the impact of COVID-19 on the aged care sector that focussed on the impact of Public Health Orders' restrictions on OPA's performance of its statutory roles, the impact on aged care residents and their families, and the ability to access home care services. It included suggestions on how to mitigate any future impacts.

Criminal justice system

Sexual offences

In response to the VLRC's inquiry *Improving the Response of the Justice System to Sexual Offences,* OPA urged the Victorian Government to enact legislative reform to require Victoria Police to have an OPA Independent Third Person (ITP) present when interviewing a person with a cognitive impairment or mental illness, irrespective of age, that the role should be expanded to provide referrals to service and support agencies, and that the ITP Program be adequately resourced to respond to current and future demand.

As part of the VLRC's inquiry, along with advocacy groups and mainstream services, OPA also participated in a roundtable consultation which focused on the experience of women with disability.

Family violence

In its submission to the Family Violence Reform Implementation Monitor regarding the implementation of family violence reforms, OPA noted the need for ongoing disability awareness training for all staff in the family violence sector, and family violence training for workers in the disability sector.

Similarly, the submission noted the importance of all justice staff undertaking disability awareness training to enable them to fulfil their obligations under the UN Convention on the Rights of Persons with Disabilities.

The submission also called for an amendment to the *Family Violence Protection Act 2008 (Vic)* to explicitly state that co-residents in SDA are in family-like relationships for the purposes of the Act. The Family Violence Reform Implementation Monitor's subsequent report recognised the concerns held by OPA and others about perpetrators' lack of understanding of conditions attached to family violence intervention orders contributing to breaches of orders and further family violence offending.

OPA also made recommendations in response to the Department of Premier and Cabinet's proposed Family Violence Rolling Action Plan. OPA called for ongoing family violence and disability awareness professional development for judicial officers and court staff and highlighted that ageism and ableist attitudes, and the reliance on others for care, contributed to the higher incidence of abuse of older people and people with a disability. OPA believes that questions specific to diverse communities must be incorporated into screening tools developed by agencies and primary prevention initiatives.

OPA has also participated in a number of critical external research projects this year, including research being carried out by UNSW on behalf of the Disability Royal Commission titled *Police Responses to People with Disability*, and research carried out by the University of Melbourne titled Primary Prevention of Violence Against Women with Disability Project, funded by Respect Victoria.

Forensic detention

The Public Advocate presented at the inaugural Taking the Temperature on Forensic Disability forum organised by the Australian Federation of Disability Organisations to provide an overview of the Victorian forensic disability landscape. Dr Pearce noted that the Victorian Government remains committed to and involved in the provision of disability justice services which are the responsibility of the DFFH.

Adult safeguarding

Adult safeguarding report

On 15 June 2020, World Elder Abuse Awareness Day, the Victorian Government announced funding for OPA to identify options to safeguard at-risk adults as part of Victoria's work on the *National Plan to Respond to the Abuse of Older Australians*. This enabled the Victorian Government to review existing legislation as recommended by the ALRC's 2017 report *Elder Abuse - A National Legal Response*. OPA's confidential report was provided to the Victorian Government in January.

Adult safeguarding roundtables

OPA hosted two virtual adult-safeguarding, national roundtables to promote the progression of implementation of the ALRC recommendations across all Australian jurisdictions.

OPA will reconvene with attendees a third time in December 2021.

The first roundtable included presentations from the Age Discrimination Commissioner, the Hon. Kay Patterson AO, Ageing and Disability Commissioner, Robert Fitzgerald AM, and Chief Adult Safeguarding Practitioner, Elicia White. Deputy Public Advocate, Dr John Chesterman, then facilitated a discussion about developments in each of the states and territories.

The roundtable was attended by approximately 18 state and territory officials and others with key roles in implementing adult safeguarding reforms. The second, attended by nearly 30 people, was another opportunity for attendees to provide an update in respect of their jurisdiction.

Age Discrimination Commissioner, the Hon Dr Kay Patterson AO, at the National Adult Safeguarding Roundtable hosted by OPA on 7 December 2020.

Elder abuse

Enduring powers of attorney

OPA agrees that the proposed national register of enduring powers of attorneys will have an important role to play in the prevention of abuse, but cautions against disproportionately relying on on the register as a safeguard against abuse.

OPA expressed this position in its submission in response to the Australian Attorney-General's Department's National Register of Enduring Powers of Attorney Public Consultation Paper. The submission was endorsed by the Northern Territory and South Australian Office of the Public Advocate, the Queensland and Tasmanian Office of the Public Guardian, the Public Advocate and Children and Young People Commissioner, Australian Capital Territory and State Trustees Limited Victoria.

Benefits of the register include elevating the status of enduring powers of attorney into registrable and searchable documents and the opportunity to provide information about the responsibilities of attorneys to all attorneys and principals.

Issues raised by OPA include risk of privacy breaches, reduction in use if registration is costly or difficult, and delays in revocations becoming operative in circumstances where elder abuse may be occurring.

OPA recommended that registration of documents become mandatory after a nominated date. Attorneys-General agreed to further consultation and to present a progress update to the Meeting of Attorneys-General by the end of 2021.

NDIS

The NDIS continued to be a key area of OPA's systemic advocacy activities.

The most significant proposed reform relates to the introduction of independent assessments. OPA's position statement on it announced that OPA stands with the disability advocacy sector in requesting that the NDIA reconsider its proposal to introduce independent assessments. OPA remains concerned that the approach proposed by the NDIA will disproportionately impact participants and prospective participants with cognitive impairment. This is at odds with the scheme's ethos of providing people with disability with the 'choice and control' over their NDIS supports that this major reform promised.

OPA's submission to the Joint Standing Committee on the NDIS' inquiry into this topic reinforced that people with dual disability or behaviours of concern are at greater risk of adverse outcomes without adequate support, and that independent assessments will prove discriminatory against participants and prospective participants with disability, especially those with cognitive impairment and complex needs. This cohort depends on higher levels of 'informed knowledge' of them and their needs to achieve equitable outcomes, emphasised by OPA's position that the viability and success of the NDIS really depends on informed and accurate assessments, rather than the proposed insufficient and compromised independent assessments.

It is crucial that Australia's federal outcomes framework takes a consistent approach to how outcomes for people with disability are measured, monitored and reported. In its submission to the National Disability Services and NDIS Outcomes Framework, OPA advocated that the national disability strategy outcomes framework be further developed to include outcomes, indicators and measures that are fully consistent with a human rights-based approach for supporting people with disability to lead a flourishing life. This thinking contributed to OPA's submission to the NDIA's consultation on improving outcomes for NDIS participants who require SIL supports.

In response to the National Disability Strategy Position Paper, OPA made 12 recommendations which focussed on the National Disability Strategy having a human rights framework, supporting people to lead a flourishing life and for the strategy and its implementation to be heavily informed by the input of people with disability and their representative organisations.

At her appearance before the Joint Standing Committee on the NDIS Inquiry into the NDIS Quality and Safeguards Commission, the Public Advocate called for the commission to be more assertive in its outreach and monitoring of issues and to engage with people on forensic orders who experience multiple and significant vulnerabilities rather than solely relying on a complaints-based system. "It is extremely difficult for people with cognitive disability, mental illness or psychosocial disability to make a complaint, particularly where they are also involved in the criminal justice or civil justice systems, which can compromise their agency to proactively act," Dr Pearce said.

OPA's earlier submission to the committee in response to its broader inquiry into the NDIS Commission highlighted the limitations of the NDIS' complaints-based system; the role of independent advocacy, including but not limited to OPA and Community Visitors; and the amendments needed in NDIS quality and safeguarding policies to prevent violence, abuse, neglect and exploitation of NDIS participants.

Dr Chesterman also appeared as a witness before the Joint Standing Committee on the NDIS inquiries into NDIS planning, NDIS workforce and general issues around the implementation and performance of the NDIS. He reported on the complex issue of specialist behaviour supports to illustrate that workforce challenges such as thin markets as well as inadequate training and pricing have far-reaching human rights implications for NDIS participants.

Service and regulatory gaps

COVID-19 pandemic

The impacts of the COVID-19 pandemic were disproportionately felt during the year by marginalised communities, including people with disability. OPA welcomed the opportunity to review the National Health and Medical Research Council's draft pandemic ethics framework in light of this. OPA recommended that, during a pandemic, the same ethical framework for decision-making and policy development should apply equally to governments as well as to public and private institutions. While governments should properly be concerned with maximising the public good, the same cannot be said for roles with specific statutory obligations and communities of interest to consider and prioritise, such as an OPA guardian, a school principal or a hospital administrator.

OPA made 16 recommendations to the Federal Parliamentary Select Committee Inquiry into Autism Services, Support and Life Outcomes. The submission used OPA data to make recommendations about people with autism and their interactions with the general health and mental health systems, the criminal justice system and the NDIS. The submission argued for better availability of services to diagnose autism to facilitate earlier therapeutic interventions, the introduction of a safeguarding system to prevent the unnecessary use of restrictive practices in the general hospital systems, and better training for health professions on the interactions between autism and other health conditions, including mental illnesses.

Homelessness

OPA continues to argue for better resourcing and an expansion of OPA's ITP Program to prevent people with disability ending up in the criminal justice system. The submission raised one of the key issues that bedevils the office: the lack of appropriate supported housing for people with disability with complex needs, and the lack of provider(s) of last resort in the NDIS to ensure that people with complex needs are not rendered homeless simply because of their disability needs.

These issues were also raised in a submission to and by the Public Advocate during an appearance before the Victorian Parliamentary Inquiry into Homelessness.

Retirement Villages

OPA made a submission to the Review of the *Retirement Villages Act 1986* (Vic) that examined possible changes to the contractual relationship between retirement villages and their residents. OPA believes that policy and legislation for retirement villages needs to align with the prioritisation of 'ageing in place' policies and the consequent changes to the health profile of those who want to remain in their home as long as possible, including a home in a retirement village. The Victorian Government should be particularly concerned to ensure that adequate safeguards are in place to allow residents to have access not just to clear information, but also to assistance and effective dispute resolution processes.

Parents with disability

OPA has continued its advocacy work with Child Protection in relation to families with disabilities. Contact between parents and children was severely restricted during the COVID-19 lockdowns during the year, causing distress to many families.

Programs for parents seeking to resume the care of their children were also cancelled or placed online, with a disproportionate impact on families with disabilities. Following the lifting of contact restrictions and the on-going disruption to family services, OPA is working with Child Protection, the Parenting Research Centre and STAR, an independent advocacy organisation that advocates for the rights of people with an intellectual disability and their families, towards developing an evidence-based, best-practice framework for working with families with disabilities involved in the child protection system.

OPA has also participated as a stakeholder in the Permanency Amendments Longitudinal Study into the impact of the 2016 amendments to the *Children Youth and Families Act 2005*, liaising with other disability advocacy organisations to bring the experience of families with disabilities to the attention of the researchers. OPA understands that the study has been completed but, unfortunately, the report has not yet been released.

6

SAFEGUARDING

Community Visitors

OPA runs the Community Visitors Program.

Community Visitors are Victorian Governor in Council appointees. They are empowered to make unannounced visits to supported accommodation facilities to monitor and report on the services and quality of care being provided to residents and patients.

They are appointed under three separate Acts of Parliament: the Disability Act, the Mental Health Act, and the *Supported Residential Services (Private Proprietors) Act 2010*.

Community Visitors perform an integral role of safeguarding the rights and interests or people with a disability. They provide a voice for Victoria's most vulnerable and marginalised individuals to ensure that they are not subject to abuse, neglect or exploitation.

This year, the program recruited 97 new trainee volunteers which represents a record number of trainees over the past three years. This was driven by the impacts of the pandemic which have included people re-evaluating what is important and wanting to give back, lockdowns causing people to look for new opportunities and greater flexibility in working hours and/or paid employment ceasing, enabling people who had not previously volunteered to do so.

In certain metropolitan areas of Melbourne, recruitment of Community Visitors has been paused as the program is now at capacity for trainee Community Visitors. Regional areas of Victoria continue to present a recruitment challenge.

Once a trainee Community Visitor has completed all the required training and has been deemed suitable by the program, they are recommended for appointment by the Victorian Governor in Council under the relevant Act of legislation for a three-year term. Existing appointed Community Visitors are eligible to seek another three-year term after the expiration of their last one.

This year, 29 new Community Visitors were appointed, and 91 existing Community Visitors were reappointed.

Table 18. Community Visitor appointments, 20/21

Community Visitor stream	No.
Disability	16
Mental Health	7
Residential Services	6
Total	**29**

Table 19. Community Visitor reappointments, 20/21

Community Visitor stream	No.
Disability	64
Mental Health	10
Residential Services	17
Total	**91**

During the year, 394 appointed Community Visitors and 101[2] trainees conducted 3718 visits either remotely via phone, video conference or face-to-face. A total of 1467 accommodation facilities for people with a disability were visited and 5068 issues were identified.

Referrals for a Community Visitor to visit a person with disability in an accommodation facility from OPA's Advice Service numbered 228.

Due to the pandemic and subsequent lockdowns in Victoria, visits were 10 per cent fewer than last year and 32 per cent fewer than 2018-2019.

2 One trainee is being trained in two streams, and three trainees were recruited last financial year.

> Although remote visiting was more worthwhile than we expected and enabled us to support house staff undergoing a very difficult time, they can't take the place of two pairs of eyes and ears actually inside the house.
>
> **Nancy, Community Visitor**

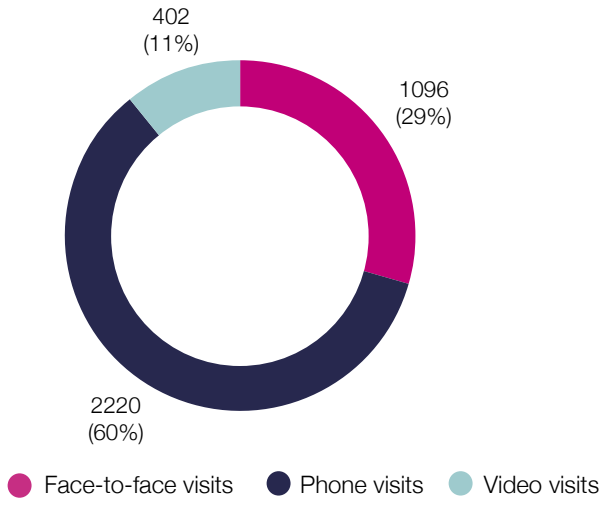


Figure 3. Community visit types, 20/21

The decrease in the number of visits last year was due to the three lockdowns which caused uncertainly for many Community Visitors.

Despite strong recruitment of new Community Visitor volunteers, quite a few experienced Community Visitors put their volunteering on hold due to either their own or family member's health concerns, not being comfortable with 'remote volunteering' or not wanting to visit until they were fully vaccinated. Due to the uncertainty caused by the COVID-19 pandemic and the continued lockdowns, the program did lose some experienced volunteers who either decided not to be reappointed or who resigned from the program.

Early in the year, Community Visitors returned to face-to-face visiting which they eagerly looked forward to along with the residents and patients who had been missing their regular visits.

Safeguarding in the pandemic

COVID-19 has had a significant impact on the Community Visitors Program with lockdowns prohibiting any physical visiting from taking place for a large part of the year.

The program has pivoted to remote safeguarding by phone or video to ensure that the vulnerable people who Community Visitors protect could continue to be supported. However, while remote visiting does provide some safeguarding and monitoring, it will never be able to replace the human element of face-to-face visiting and interacting with residents and patients, particularly as the nature of some disabilities means it is very hard or impossible to communicate without being physically present with the person. The constant state of uncertainty and moving between remote visiting and face-to-face visiting has had an impact on the mental health and welfare of Community Visitors as well as the residents and consumers they visit. It is hoped with more of the population being vaccinated, this situation will ease next year with lockdowns becoming less frequent.

NDIS issues

The NDIS landscape continues to present challenges for the program, particularly operating in an environment where there is uncertainty for Community Visitors about their rights to visit former group homes. In some cases, the homes have not transitioned to be specialist accommodation-enrolled dwellings, and, in other cases, they have been but OPA has not been notified. Also causing concern is service providers who were generally only providing accommodation services and have now also become registered NDIS providers of services. The dual role has created confusion both for residents and Community Visitors.

Activities

OPA staff support Community Visitors in their regular visiting work and assist volunteer team leaders (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.

Boards

The three acts of legislation which set out the functions and powers of Community Visitors also establish stream boards made up of two Community Visitors elected by their peers and chaired by the Public Advocate. The boards of each of the streams come together to meet and are known as the Combined Board.

The Combined Board met four times during the year. Its work focussed on:

- remote safeguarding and the learnings
- COVID-19 safe plan and guidelines for Community Visitors returning to face-to-face visits
- referrals to the Disability Services Commissioner
- development of policies and guidelines for the Community Visitor annual report

- overseeing the final review of the Community Visitors Program and how it accords with the National Volunteering Standards.

There are two sub-committees which meet under the auspices of the Combined Board and also progress operational work of the program: the Training Steering Committee and the Policy Review Committee.

Training Steering Committee

The Training Steering Committee met twice during the year and its work included:

- a review the COVID-19 safe plan, guidelines and a new volunteer agreement
- a review of the on-line training modules
- endorsement of a survey regarding a new resource booklet *The Pathways Booklet* for trainee Community Visitors
- endorsement of the 2021 Community Visitors training plan
- progress of a review of training modules.

Policy Review Committee

The Policy Review Committee met twice during the year and its work included:

- revision of the Terms of Reference of the Policy Sub-committee
- exiting a trainee from the Community Visitors Program policy
- the non-reappointment of a Community Visitor policy
- development of an honorarium policy
- revision of the reimbursement policy to meet pandemic changes
- development of a 'number of visits' policy.

Several policies are in progress relating to and including those for:

- powers of inspection
- records management and privacy
- working electronically
- developing case studies for the annual report
- naming of facilities.

Independent Third Persons

ITPs are volunteers who provide essential safeguarding support for alleged offenders, victims and witnesses who have a cognitive impairment including an Intellectual Disability, a mental illness or an ABI in police interviews and procedures.

They support people of all ages and attend all Victoria Police stations as a 24/7 service. Their role is to assist people in interviews, when making statements, participating in forensic procedures, attending remand hearings with a bail justice and being served with various types of orders, including personal safety intervention orders.

Last year, 166 ITPs supported 2621 clients in 3631 interviews at 142 police stations and other locations across Victoria. Approximately 54 per cent or 1956 of the 3631 interviews, were attended remotely. This slight reduction in overall interview numbers from last year can be attributed to situations where it was only possible to attend remotely, such as during lockdowns, however, the client's disability and/or complex communication needs made that mode unsuitable so police decided not to proceed with an interview until an ITP could attend in person.

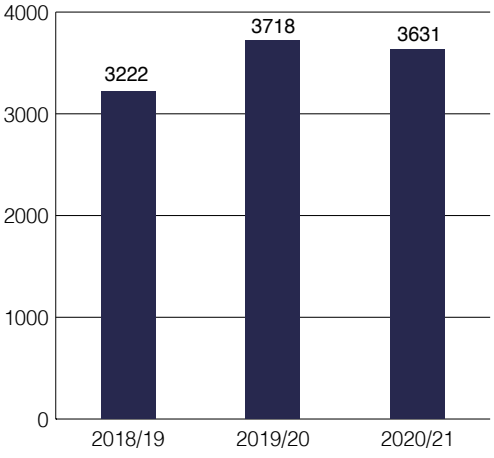


Figure 4. ITP interviews, 18/19-20/21

Remote safeguarding

As a result of a working in a 'COVID normal' environment, last year, the program adapted its model of service delivery to attend interviews remotely via phone as well as in person. Remote attendance accounted for 50 per cent of this year's interviews.

This flexibility enabled vulnerable Victorians to receive the support of ITPs when previously they may not have due to remoteness or volunteer availability. Therefore, the program was available to all Victorians requiring an ITP whenever needed, irrespective of considerations like distance, local volunteer availability and COVID-19 lockdowns.

Demographics

ITPs attended 3146 interviews to support alleged offenders (86.64 per cent), with 274 (7.55 per cent) victims, while 90 (2.48 per cent) of interviews were attended to support clients making witness statements. ITPs attended 121 annual sex offender register interviews (3.33 per cent).

81.40 per cent of alleged offender interviews attended were with male clients, compared to 18.60 per cent female. For witness interviews, 53.73 per cent were with male witness clients and 46.27 per cent female. An increased number of victim statements were supported for males compared to last year: 38.46 per cent, with 61.54 per cent female

Type of offence

Consistent with previous years, the top two offences for all interviews were assault and theft.

ITPs supported 588 alleged offender clients for assault offences. The highest categories of offences for victims and witnesses were sexual assault (non-penetration) (88) victim and sexual assault (penetration) (14).

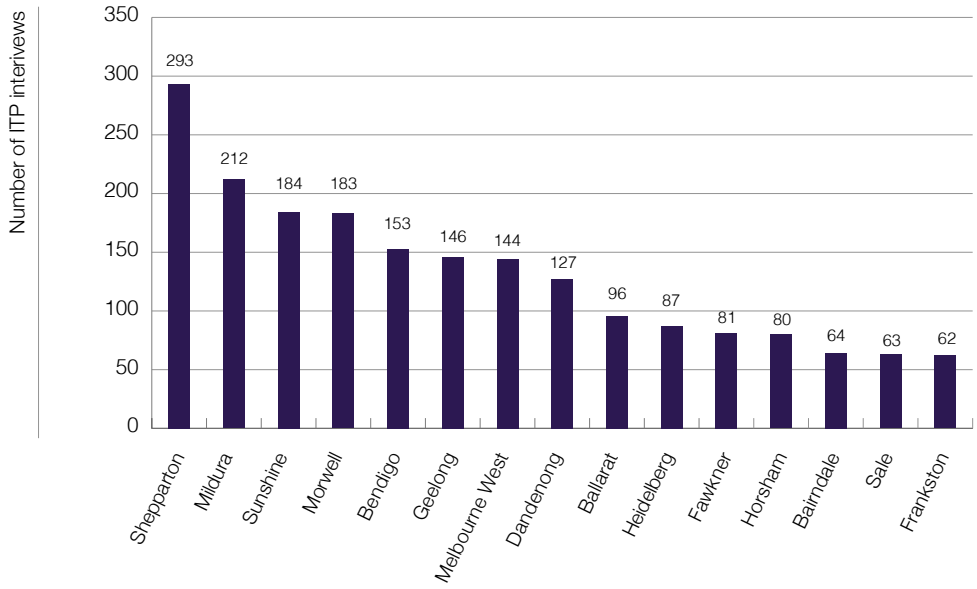


Figure 5. Top 15 police stations for use of ITPs, 20/21

Location of interviews

ITPs attended interviews at 142 police stations, two more stations than last year and seven locations more than in 2018-2019.

Figure 5 shows the top 15 police stations where the highest number of interviews took place, with nine of those in regional Victoria. ITPs also attended interviews at client homes, disability facilities, hospitals and prisons in Melbourne and regional Victoria.

Expanding role

ITPs were called to support people in a more varied and widened range of police procedures this year.

These included remand hearings at police stations, even when no interview occurred, and new forensic procedures such as DNA collection in addition to fingerprinting. ITPs are also called when a person with a cognitive impairment is being issued with an order that requires them to understand its associated conditions such as a personal safety intervention order.

This expanded role has meant that ITPs needed to extend their knowledge of police processes and be able to adequately support vulnerable Victorians to understand and act on their rights. In response, ITPs were provided with a revised resource and information manual to assist them to perform their role.

Judicial process involvement

ITPs are increasingly being required to participate in the judicial process underlining the importance of ITP attendance at police interviews. This includes requests for statements, notes and reports subpoenaed as evidence. ITPs are also increasingly being called to give evidence in person in court proceedings. These demands have markedly intensified the support and expert advice needed from program staff.

Innovation

The program responded to the COVID-19 pandemic by changing to remote safeguarding practices using phone interview attendance. This required a very significant amount of change and innovation in all aspects of program operations including revised policies and guidelines as well as training, and support and coaching of individual volunteers. It was backed up with increased data capture and monitoring to assess how the new processes were working, prompt responses to emerging issues and adapting to processes as required.

It also entailed increased liaison with key stakeholders such as Victoria Police, Corrections and the ITP Call Centre which police use to book an ITP as well as work with OPA's IT team to develop and implement necessary database changes. Finally, it required regular tailored communications with volunteers to keep them up-to-date with pandemic changes and the

implications of those for them.

This work could not have occurred so effectively without the extension in the 2020 and 2021 State budgets of the additional program funding originally received in 2018.

Corrections Independent Support Officers

Corrections Independent Support Officers (CISOs) are experienced ITP volunteers who provide support and assistance to prisoners who have a diagnosed Intellectual Disability during Governors' Disciplinary Hearings.

CISOs explain to prisoners their rights, check they understand them during the hearing process and will also support them to exercise these rights if they wish to.

Issues

OPA is concerned about the low number of prisoners accessing CISO support and the alleged rate of prisoner refusal of a CISO. OPA is unclear what information prisoners receive about the program or how a CISO could support them in a hearing.

Individual prison CISO participation rates vary greatly. Of particular concern is the use of CISOs in the Dame Phyllis Frost Centre, the largest female prison in Victoria which typically facilitates one to two CISO attendances annually but had none last year.

CISOs attended 74 hearings for 106 charges supporting 63 clients at four prisons in Victoria. This is the lowest number of hearings attended since 2009 when the program started. COVID-19 was a contributing factor as Corrections Victoria needed to develop an IT system that allowed remote prison attendance for anyone requiring it, such as CISOs.

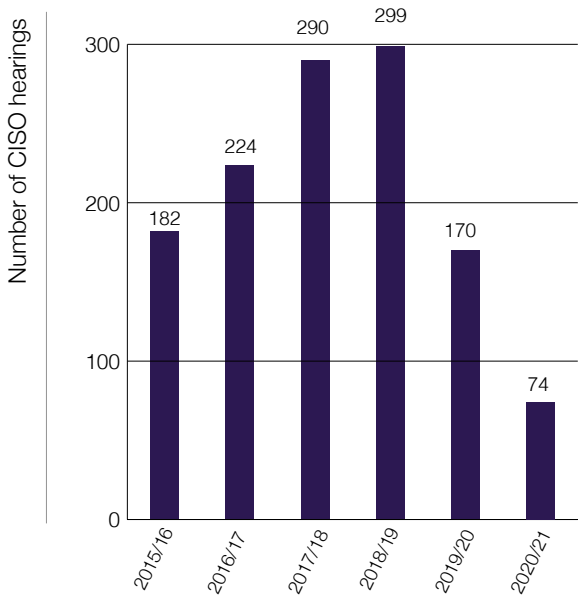


Figure 6. Number of CISO hearings, 15/16-20/21

The table below shows the location and number of CISO hearings over the last three years. The data draws attention to the inconsistent uptake of CISOs across Victorian prisons. Concerningly, many prisons have not utilised CISOs for vulnerable prisoners for the last two years.

Table 20. Location and number of CISO hearings, 18/19-20/21

Hearing locations	18/19	19/20	20/21
Port Phillip Prison	156	100	56
Metropolitan Remand Centre	119	56	13
Melbourne Assessment Prison	12	8	-
Barwon Prison	5	-	-
Ararat Prison	2	-	-
Dame Phyllis Frost Centre	1	2	-
Hopkins Correctional	1	2	4
Marngoneet/Kareenga Correctional Centre	1	2	1
Ravenhall Correctional Centre	1	-	-
Loddon Prison	1	-	-
Total	**299**	**170**	**74**

CISO clients are young in the main with 82 per cent under 36 years of age. Clients identifying as Aboriginal comprised 20 per cent and were all male.

7

ENGAGEMENT

Advice and education

The Advice Service continues to operate two phone advice lines: the general advice and the medical treatment advice line for health professionals only.

Many enquiries to the service are also received electronically.

This year, the service provided 11,619 instances of advice, continuing the trend of recent years with the number of emails increasing 14.4 per cent this year, up from 8.5 per cent last year.

The percentage of advice following a phone enquiry was 85 per cent per cent, with the remainder via email, letter or in person.

The majority of callers were provided with advice and information by the Advice Service and or another OPA program with 3.15 per cent referred to an external organisation for additional information and resources.

Issue types

This year saw a change to the usual pattern since 2015 with most calls related to guardianship and administration (32 per cent), a 15.9 per cent increase compared to last year. This may be attributed to the relatively new guardianship and administration Act.

Enquiries related to planning for the future made up the next largest category at 25.6 per cent. These included calls about powers of attorney, advance care planning, appointing a medical treatment decision-maker and supported decision-making options. Some of these calls related to questions about substitute decision-making documents that people had put in place to plan for their future. This included callers with queries about documents that other people had made and callers with concerns about how an enduring power of attorney was being used.

Medical treatment decision-making, healthcare treatment, including mental health and end of life (palliative care) issues constituted 17.2 per cent of issues.

The number of calls related to the residential aged care sector increased from 18 to 77. This may be attributed to the Royal Commission into Aged Care and the impact of COVID-19 on the aged care sector.

Caller patterns

Caller patterns remain consistent with previous years. Most callers were from family and friends of people with disability (39.5 per cent), followed by professionals from the health sector (22 per cent), community sector (17 per cent) and government agencies (6.9 per cent). People calling on their own behalf constituted 12 per cent.

Community Visitor referrals

Lockdowns and limitations on the number of visitors permitted in homes due to the pandemic appear to have had a significant impact on referrals to the Community Visitors Program.

Referrals to the program numbered 230, an overall decrease of 5.3 per cent on last year, attributable to a 32.5 per cent decrease of referrals to disability group homes.

However, the number of referrals to mental health units increased by 33 per cent and the number of referrals to SRS increased by 13 per cent. In most cases, residents of mental health facilities and SRS contact OPA on their own behalf to request a visitor. The increase in referrals may be attributed to the impact of the pandemic and restrictions as well as the OPA mail-out to every resident and consumer of mental health services with information on how to request a Community Visitor.

In contrast, most Community Visitor referrals to disability group homes are usually made by a person other than the resident. In many cases, residents of disability group homes may not be able to make such a request without assistance. The substantial decrease in requests for Community Visitors to disability group homes may reflect the lack of contact with friends and family because they can't visit in person to ascertain care and treatment.

Abuse

One or more forms of abuse were the concerns of 1001 enquiries, or 9.2 per cent of all enquiries. Following a similar pattern to last year, the main type of abuse people contacted the service about was financial (46.4 per cent) followed by neglect (37.4 per cent), psychological or emotional abuse (29.5 per cent) and other categories of abuse (29 per cent). (Due to more than one type of abuse possibly being recorded within the same enquiry, the percentage adds up to more than 100 per cent. 'Other abuse' includes sexual, impairment-related, other violence or abuse.)

Short-term advocacy

Short-term advocacies generally relate to service or communication issues for a person with a disability. They usually involve an intervention, which may include follow-up calls to clarify or obtain further information on behalf of the person with a disability.

There has been a significant increase in the number of short-term advocacies undertaken this year.

Short-term advocacy was provided in 42 matters, compared with eight last year. While it is not known definitively why the increase has occurred, it is worthwhile noting the impact of COVID-19 especially on vulnerable groups including people with disability seeking support and services that are operating at reduced capacity or not at all.

NDIS

There were 255 NDIS-related enquiries, a 23 per cent increase over last year.

Calls from NDIS support coordinators increased significantly with 512 calls, a 67 per cent increase from last year. Often, the support coordinator is new to the role or a high turnover of support coordinators may contribute to the increase in enquiries.

Support coordinators regularly raised concerns about suspected or substantiated abuse, suspected fraud and misuse of funds either by a service provider or participant's relative or friend or were concerned the participant's services were cancelled by the plan nominee. The service noted reluctance from support coordinators to escalate and act on concerns without the participant's consent. Other enquiries related to requests for individual advocacy, the lengthy wait times for appeals and plan reviews and consent issues, particularly around service deeds (that is, who can sign on behalf of a participant if they have a decision-making disability).

COVID-19

During Stage 4 restrictions, the service was delivered mainly from the office. This was due to the nature and complexity of calls which require regular cross-team consultation.

Remote witnessing

Many temporary measures introduced last year to allow for electronic signing and remote witnessing of legal documents, including an enduring power of attorney, were made permanent earlier this year after consultation with various stakeholders, including OPA.

OPA's submission outlined the types of abuse and exploitation linked to enduring powers of attorney and reported through the Advice Service. This informed the recommendations made for effective safeguards to protect people against the increased potential for misuse such as coercion, when remote witnessing of substitute decision-making documents is undertaken.

A snapshot of advice requests

Advice requests during the pandemic appeared to have either followed a similar pattern to last year or did not feature as prominently this year. In addition, some new concerns emerged:

- COVID-19 vaccination rollout across residential aged care facilities and supported residential facilities. From the time data was captured, the Advice Service received 74 enquiries relating to COVID-19 vaccinations.

Some of the issues raised in these enquiries included:

- Who is the person's medical treatment decision-maker if the person lacks decision-making capacity?
- Would the COVID-19 vaccination be considered significant or routine treatment under the Medical Treatment Planning and Decisions Act?
- Can a COVID-19 vaccination be refused on someone's behalf?

Other COVID-19-related enquiries followed a similar pattern to last year:

- concerns around the provision of services and discharge planning for patients during the lockdown
- many calls also related to vulnerable people at home who were at risk of abuse/neglect due to reduced or closed services.
- the pandemic prompted many callers, to plan for their future with consideration given to powers of attorney, appointing medical treatment decision-makers and making advance care plans
- Stage 4 restrictions impacted on the usual ways people organised for enduring powers of attorney to be witnessed. People were encouraged, where possible, to delay the completion of these documents if remote witnessing proved challenging to implement.

Education

COVID-19 has had a significant impact on OPA's ability to provide public education and engagement. There was a decrease in requests for education from various stakeholder groups, for example, seniors, community groups, and culturally and linguistically diverse (CALD) groups.

One of the challenges in providing online education for CALD groups was facilitating the session with the use of online interpreters, sometimes in more than one language. This highlighted the importance of direct, in-person engagement and the importance of tailoring each session to meet the needs of that community. Two education sessions were delivered to CALD communities this financial year, Pronia (Greek) and Wyndham Community and Education Centre, (Sudanese), far fewer than last year.

As restrictions began to ease, face-to-face education sessions resumed, albeit slowly, however, the fourth lockdown saw many of them postponed, once again.

OPA provided 73 education sessions to professionals and the public to a total audience of 2273. Fifty-four of the 73 sessions (74 per cent) were delivered online on various digital platforms such as webinars and interactive seminars. Guest-speakers were provided at online events and presentations on topics such as planning for the future, medical treatment decision-making and guardianship.

The majority of education sessions were provided to professionals (78 per cent), with 22 per cent delivered to the general public.

Healthy Discussions Project

The project 'Healthy Discussions: Supporting people with disability to make and communicate health decisions' aims to improve the way that health practitioners communicate with people with disability and their understanding of disability, by giving them the opportunity to hear from people with lived experience.

The two-year project received $450,000 in funding from the Australian Government Department of Social Services.

Despite the challenges of a remote-working environment, strong foundations for the project were laid through the establishment of a steering committee and the employment of the project team. The development and delivery of online information sessions for health practitioners commenced in March 2021, and filming by a production company of a short video that will be an educational resource beyond the life of the project, was undertaken in May 2021.

The project steering committee, which first met in August 2020, is comprised of people with experience as self advocates and a lived experience of Intellectual Disability, ABI and Autism Spectrum Disorder, as well as a representative from the Monash Health Centre for Developmental Disability Health. Members of the steering committee have so far contributed their expertise through meetings, online workshops, participation in information sessions and as talent for the short video. To facilitate and recognise the valuable contribution of members of the steering committee, a number of the self advocates who are part of the steering committee are employed casually by OPA.

For the video, the talent shared personal experiences and tips on how health practitioners can improve their communication practices, and can contribute to improved supported decision-making to promote everyone's right to make decisions about their own health.

In February 2021, a student intern and two part-time project workers with disability were employed by OPA. The student intern undertook a part-time, six-week placement and assisted with the development of the project evaluation plan. The two part-time project workers, along with the

project coordinator, are involved in the development and delivery of the online information sessions and the other project activities. During the first half of 2021, OPA also employed the services of Reinforce Self Advocacy, an organisation run for and by people with Intellectual Disability, to help OPA better understand the lived experiences of people with disability. To do this, Reinforce documented interviews with eight self advocates with disability who were invited to share their messages to health practitioners based on their experiences of the health system.

Since March 2021, the project team has developed content for information sessions on topics including communication tips, supported decision-making, human rights and the diversity of patients with ABI, and has delivered the first two of a planned series of six online webinars. An important aspect of the project is showcasing the skills and abilities of people with disability and challenging assumptions by highlighting the voice of people with lived experience of disability, and this has been the underlying approach throughout the first year of the project.

CASE STUDY

Short-term advocacy – Upholding a person's human rights

Ms D's story

The Advice Service received multiple calls from Ms D, 73, her friends and the residential facility in which she resided.

Ms D relocated to Melbourne from Western Australia to live with a friend. Unfortunately, within weeks of the move, she had a stroke and her friend became her carer. She was assessed as having impaired decision-making capacity and VCAT appointed an administrator to manage her finances. Ms D had no family and, besides her carer, had no other friends living in Victoria.

Subsequently, Ms D's friend and carer was diagnosed with terminal cancer and hospitalised and was unable return home due to their care needs. Both the friend and Ms D were placed in separate aged care facilities.

Ms D was unhappy in her facility and regularly expressed to staff her wish to move back to Western Australia where she had lived for 30 years and where she had a significant social network. Her friends there also called the facility to support Ms D's desire to relocate but it allegedly refused to engage with them, citing privacy reasons.

Her friends contacted the Advice Service advocating for her relocation to Western Australia and expressed frustration with the facility's lack of support for Ms D's wishes. Allegations were made that the facility ignored phone calls, emails and letters requesting support to assist Ms D's move. A petition signed by her friends was circulated and concerns raised about a COVID-19 outbreak there.

Ms D then called the Advice Service herself enquiring why she still needed an administrator and requested support to return to Western Australia. She felt it was unfair that she was still in the facility.

The facility had repeatedly told Ms D directly that the move was not possible because of concerns about her decision-making capacity, citing previous medical evidence (linked to the stroke).

Ms D's friends contacted the Advice Service over several months enquiring how they could support her to return home. They reported Ms D was mobile, clear about her wishes, had some physical support care needs but perhaps needed some support to make her own decisions.

Following extensive advocacy from the Advice Service, a friend of Ms D's submitted an application to VCAT requesting the appointment of a guardian to make an accommodation decision. The VCAT member was satisfied that Ms D could make her own lifestyle decisions (accommodation), declining to appoint a guardian and cancelling the administration order.

Ms D returned to Western Australia later that week with support from friends. She later contacted the Advice Service to express her gratitude and advised she was loving her new home which was not a residential aged care facility.

Communications

Under the Guardianship and Administration Act, the Public Advocate's role includes promoting and facilitating informed public awareness and understanding by disseminating information about:

i. the provisions of the Act and other legislation dealing with or affecting persons with a disability or persons who may not have decision-making capacity

ii. the role of VCAT and the Public Advocate

iii. services provided to persons with a disability.

The office's communications function is centrally involved in helping the Public Advocate fulfil these duties.

OPAs online presence

OPA's online presence is a key outreach function. As in previous years, most visits to the OPA's public website, related to either powers of attorney or medical treatment decision-making.

This year was focused on building the website to create a more accessible, user-friendly resource that better met the needs of its stakeholders: people with disability and their families and carers, and the professionals who work with them.

The architecture of the website was restructured to speak directly to these two groups, with a focus on the rights and options for people with disability, and the legal obligations and processes for professionals working with people with disability.

Where possible, content that had previously been somewhat hidden in PDFs was extracted and embedded as plain English text on the website. This enabled users to more easily access information from their phone or other mobile device, a mode of access which has substantially increased since the last redevelopment of the site six years ago.

At every step of the process, the focus was on improving website accessibility and compliance with the latest Website Accessibility Guidelines 2.0 (WAG 2.0). All content from the old site was reviewed and, where necessary, updated. A powerful Google-style search engine makes it easier for people to find the information they need, and OPA's latest submissions, research and upcoming information sessions are now prominent on the home page.

Increasingly, documents are provided in Easy English.

The website also incorporates a new online form system, including an online interactive form for completing NDIS service deeds and which integrates with other OPA systems, thus improving efficiency for guardians.

Users

This year, the OPA website had 251,377 sessions, compared with 274,309 last year. This represents a decrease of eight per cent, possibly due to not being able to promote the old website as regularly during the time that content was being migrated into the new site.

Document downloads decreased from 86,042 to 72,058 (a decrease of 16 per cent). This was mainly due to moving a significant amount of content previously buried in downloadable PDFs onto web pages as HTML as required by Victorian Government guidelines, as well as converting the downloadable NDIS deeds form to an interactive online form. Up until the launch of the new website, the number of document downloads was comparable with last year.

OPA updates

This year, OPA issued ten editions of its accessible electronic newsletter, OPA Updates. This monthly newsletter enabled OPA to provide stakeholders with timely updates on new information and resources, promote events and support advocacy. Subscriber numbers increased 35 per cent, from 588 to 796.

Publications

In line with the Victorian Government's Digital First Strategy, all OPA publications are now available online.

During the year, OPA's suite of more than 120 print and online publications was reviewed, with the aim of increasing accessibility and reducing duplication. These included information guides, fact sheets, brochures, forms, posters and an app. The majority of fact sheets and forms were converted to accessible website content.

The number of OPA publications distributed by its distribution partner Victoria Legal Aid was 21,719, down 81.5 per cent on last year. This was largely due to the maximum number of publications which could be ordered at a time being reduced to offset potential wastage, and hospitals, a major user of OPA publications, being directed to DFFH for copies of the popular powers of attorney brochure, *Take Control of your Future Planning: An Introduction*. In addition, the pandemic lockdown period reduced demand for hard copies of publications.

A video to help health practitioners better communicate with people with disability was filmed during the year. The ten-minute production utilised pairs of people with a disability answering the same set of questions about their own personal experiences and advice they would provide to practitioners. It also utilised a GP specialised in the issues to help transmit the message. An application has been made to the federal department which funded the project to utilise the considerable and valuable footage for a longer video to be used as a training tool in medical schools.

Internal communications

During the year, 122 staff newsletters were issued, providing OPA staff with timely and accurate information about the work of the office. An intranet is also maintained and managed for the dissemination of corporate messages and useful resources for staff.

With changing work practices due to the pandemic, and the move to remote working, or partially remote working, for other than skeleton staff, the internal newsletters were a vital lifeline for communicating crucial information, changes to practice and key messages, and to shore-up staff connection and cohesion during an uncertain time.

In addition, video-conferencing platforms were utilised for an increased number of all-staff meetings which further alleviated feelings of isolation and reduced information access due to the loss of 'corridor conversations'. These were very well-attended and opportunities for questions were keenly utilised. To ensure these meetings were accessible for all staff, when required, Auslan interpreters and live captioning were provided.

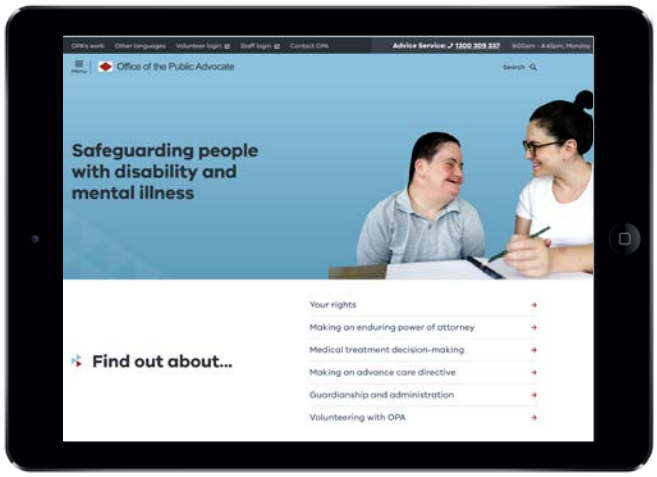
Media

This year, OPA issued 13 media release, all of which were featured on the OPA website, as well as working directly with journalists to promote issues of interest and concern.

Stories relating to OPA issues featured 23 times in the media including the issue of prisoners with intellectually disability being subject to disciplinary hearings without oversight, concerns about vulnerable Victorians living in SRS and proposed NDIS independent assessments.

This was during a time when the pandemic dominated the news.

The raising of issues in the media contributed substantially to successful outcomes of other OPA advocacy during the year.

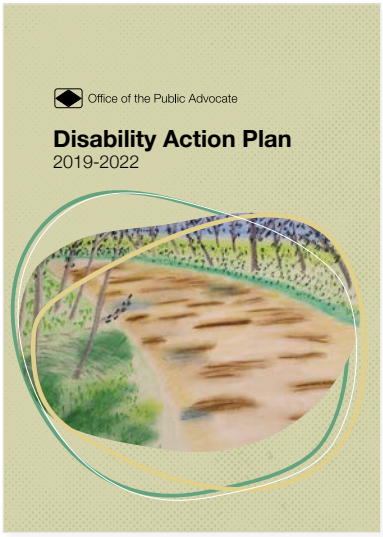


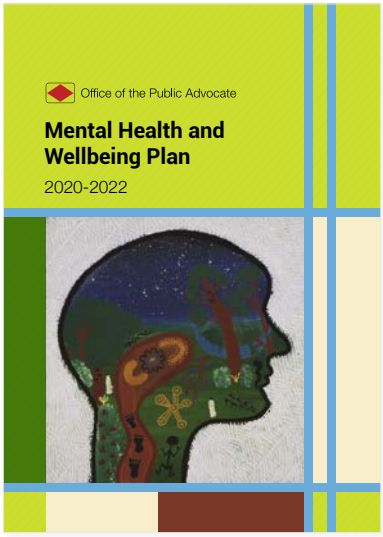
OPA website

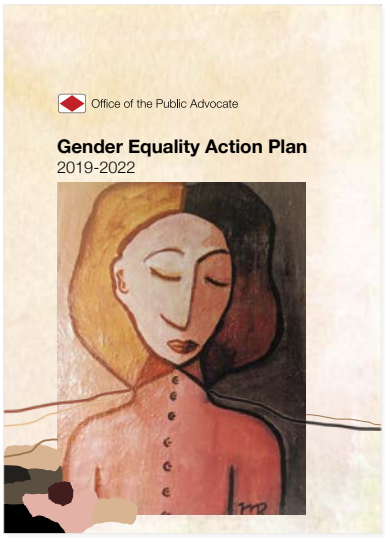
Diversity at OPA

OPA's *Diversity and Inclusion Framework, 2019-2022* is comprised of its several diversity plans, underpinned by a statement, Addressing Intersectional Discrimination, together with affirmative actions which are designed to drive change and promote an inclusive culture.

The framework and its following achievements were due to the five dedicated diversity committees and OPA staff members.







Disability Action Plan

This year's key highlights were:

- OPA's new website has ensured that its submissions and publications are accessibly available in both HTML and PDF formats
- A staff survey found that the percentage of staff identifying as having a disability was again above average for the Victorian Public Sector
- The Healthy Discussions project provided an internship for a student with disability via the Australian Network with Disability, Summer Internship Program as well as casual and fixed-term employment positions for people with cognitive disability
- A disability audit of OPA's premises was conducted at Level 1, 204 Lygon Street, Carlton, found that OPA's premises were compliant with The *Disability Discrimination Act 1992* (Cwlth) and the Disability (Access to Premises) Building Standards.

Mental Health & Wellbeing Plan

The first Mental Health and Wellbeing Plan was launched in June 2021 and a new committee formed to implement its actions.

Gender Equality Action Plan

- A diversity and inclusion celebration featured Victoria's first Public Sector Gender Equality Commissioner, Dr Niki Vincent, who shared her journey and plans to work with organisations such as OPA to build a culture in the public sector in which gender equality, diversity and inclusion are intrinsic to it
- Creation of a Public Advocate Leadership Development award for staff at the VPS3, VPS4 and VPS5 levels.

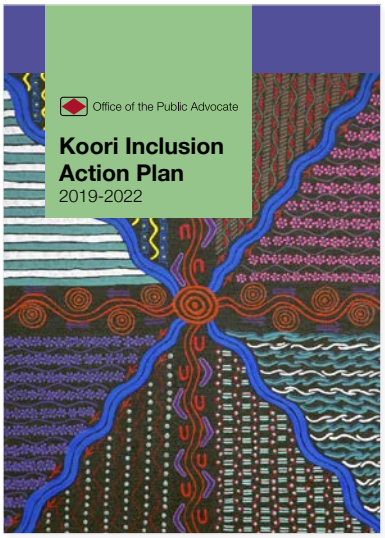
The plans are the:

- Disability Action Plan
- Mental Health and Wellbeing Plan
- Gender Equality Plan
- Koori Inclusion Action Plan
- Cultural Diversity Plan
- LGBTIQ Inclusion Plan

The priorities overlap with a number of individual actions in various diversity plans.

All plans are due to be completed by the end of 2022.

The next step in the development of diversity inclusion in OPA is an all-encompassing, OPA Diversity and Inclusion Plan.



Koori Inclusion Action Plan

- Increased the representation of Aboriginal committee members with two non-OPA, Aboriginal VPS staff engaged to support the committee and ensure its approach to increasing the consciousness of Aboriginal people is in a meaningful and culturally appropriate way
- Established a relationship with Australia's brain injury organisation, Synapse, to consider various models and potential collaboration in culturally appropriate and safe housing for Aboriginal Victorians with a disability.

There were also representations by the Advocacy and Guardianship Program to the NDIS regarding culturally appropriate housing in rural and regional Victoria.

LGBTIQ Inclusion Plan

- Successfully held the International Day Against Homophobia, Biphobia, Intersexism and Transphobia (IDAHOBIT) commemoration, morning tea
- Included the Rainbow flag of the LGBT community in OPA's email footer to signal it is an inclusive organisation and an LGBTIQ ally
- An internal forum featured the coordinator of the Victorian Aboriginal Legal Service's LGBTI Ageing and Aged Care, Pauline Crameri, and a short video clip with the patron of Switchboard Victoria, Heather Morgan
- Included LGBTIQ questions in the OPA staff survey for the first time
- SBS module on LGBTIQ.

Cultural Diversity Plan

- Successfully held an internal forum for a Cultural Diversity Week event featuring Foundation House's Senior Advisor Policy and Advocacy, Josef Szwarc, who spoke on 'Race, religion and refugees - The impacts of race and religion in Australia's humanitarian policies and refugee settlement experiences'
- Updated and promoted OPA guidelines on the use of interpreting and translation services
- Delivered two CALD community education sessions.

Feedback and complaints

This year, with the impact of COVID-19 and the number of contacts people had with OPA, there was a decrease of 18 per cent in formal complaints over last year and a 23 per cent decrease from the year before that.

The year also saw a 31 per cent decrease in enquiries from the Victorian Ombudsman.

OPA's largest program area, the Advocacy and Guardianship Program, attracted the majority of complaints (65 per cent), followed by the Advice and Response Program (27 per cent) with the remaining eight per cent attributed to other program areas.

Table 21: OPA's formal complaints by issue type, 18/19-20/21

Issue	18/19	19/20	20/21
Complaints	82	77	63
Informal complaints	26	18	16
Ministerial or Ombudsman enquiries	18	16	11
Referrals to external agencies	6	12	6
Review of a guardian's decision	6	4	8
Compliment	4	1	4
Out of jurisdiction	12	16	14
Feedback	-	2	-
Unreasonable conduct	-	-	1
Enquiries from another agency	-	-	2
Total	**154**	**146**	**125**

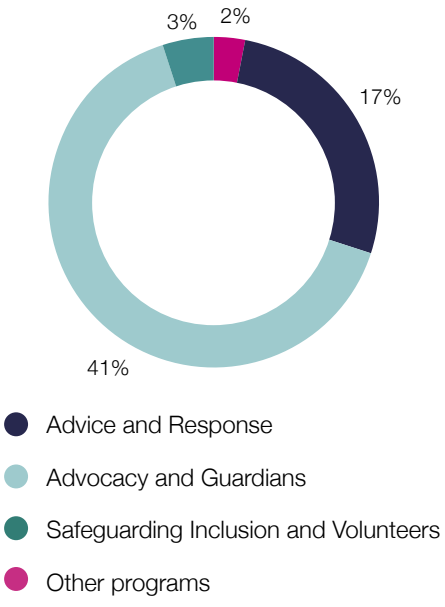


Figure 7. Feedback and complaints by OPA program area, 20/21

In March 2020, with the new Guardianship and Administration Act, there was a 50 per cent increase in requests for a review of a guardians' decisions. This was due to the change from guardians making decisions in a person's best interests, to now making them in line with their will and preference.

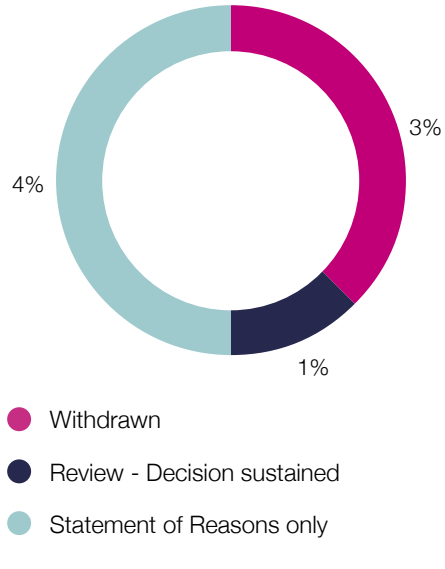


Figure 8. Outcomes of OPA feedback and complaints, 20/21

The way OPA interacts with people (communicates with and treats people) was a common criticism. In many cases, this was related to an absence of understanding about the role and delegated authority of a guardian or lack of clarity about the delineation between OPA and VCAT which appoints guardians.

A plain English fact sheet about the role of OPA in guardianship and investigation matters is being developed which will be translated into 17 other languages. It is hoped it will help reduce these type of complaints.

Table 22: Formal complaints to OPA by issue type, 20/21

Bias	1
Duty of care	2
Health/Medical issue	2
Advocacy	3
Access to services	4
Accommodation	4
Privacy	4
Delay	5
Access to represented person	6
How we treat people	8
Investigation	10
How we communicate with people	14
Total	**63**

The Advice Service received 74 enquiries relating to COVID-19 vaccinations.

8

APPENDICES

Appendix A
Compliance disclosure

Decision-making and advocacy

OPA makes decisions and advocates for people with disabilities and, in these capacities, has obligations under, and must comply with, the following statutes:

- *Guardianship and Administration Act 1986*
- *Guardianship and Administration Act 2019*
- *Charter of Human Rights and Responsibilities Act 2006*
- *COVID-19 Omnibus (Emergency Measures) Act 2020*
- *Medical Treatment Planning and Decisions Act 2014*
- *Carers Recognition Act 2012*
- *Severe Substance Dependence Treatment Act 2010*
- *National Disability Insurance Scheme Act 2103* (Cwlth)

Information management

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

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

- *Guardianship and Administration Act 1986*
- *Guardianship and Administration Act 2019*
- *Victorian Civil and Administrative Tribunal Act 1998*
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*
- *Disability Act 2006*
- *Mental Health Act 2014*
- *Supported Residential Services (Private Proprietors) Act 2010*
- *Public Records Act 1973*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Public Administration Act 2004*
- *National Disability Insurance Scheme Act 2013* (Cwlth).

Disclosure of improper conduct

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

OPA is not able to receive disclosures under this Act. It does have an obligation to provide welfare to persons making protected disclosures. Information about making protected disclosures and OPA's role is provided on its website.

Appendix B
Comparative workforce data

The following tables disclose the head count and full-time equivalent (FTE) of all active public service employees of OPA, employed in the last full-pay period in June of the current reporting period (2021), and in the last full-pay period in June of the previous reporting period (2020.)

Table 23. Age and employment status of OPA employees, 20/21

	Employment status				Previous years	
Age range	**Ongoing**	**Fixed-term**	**Casual**	**Total**	**19/20**	**18/19**
Under 25	-	-	-	-	-	1
25-34	8	5	-	13	12	16
34-44	19	8	2	29	24	18
45-54	25	6	4	35	30	35
55-64	27	5	2	34	34	35
Over 65	10		1	11	8	6
Grand Total	**89**	**24**	**9**	**122**	**108**	**111**

Table 24. Employment classification and gender of OPA employees (paid staff), 20/21

	Paid staff							
Classification	**Male**	**EFT**	**Female**	**EFT**	**Self describe**	**EFT**	**Total**	**EFT**
VPS 1	-	-	1	1	-	-	1	1
VPS 2	-	-	10	7.6	-	-	10	7.6
VPS 3	5	3.2	16	11.6	1	0.4	22	15.2
VPS 4	3	3	5	4.1	-	-	8	7.1
VPS 5	16	15	55	48.2	-	-	71	63.2
VPS 6	5	4.9	2	2	-	-	7	6.9
Executives	1	1	-	-	-	-	1	1
Legal Officers	-	-	2	1.8	-	-	2	1.8
Grand Total	**30**		**91**		**1**		**122**	

Appendix C

External committees and advisory groups

OPA is represented on the following external committees and advisory groups:

- Australian Council on Guardianship and Administration
- Balit Narrum
- COVID-19 Disability Taskforce
- DHHS Disability Stakeholder Advisory Group Supporting Justice Advisory Committee
- Disability Act Review Advisory Group
- Eastern Community Legal Centre, Elder Abuse Strategic Advisory Group
- Elder Abuse and Safeguarding Advisory Group
- Elder Abuse Roundtable
- Ethnic Communities Council of Victoria Elder Abuse Advisory Group
- Justice Connect Safeguarding Now, Preventing Future Abuse Project Steering Committee
- Justice For All Steering Committee
- Law Institute of Victoria, Disability, Elder and Health Law Section Executive Committee
- Law Institute of Victoria, Elder Law Committee
- Our Watch
- Project Steering Committee for the Integrated Model of Care for Responding to Suspected Elder Abuse
- Review of The Retirement Villages Act Stakeholder Reference Group
- Royal Children's Hospital, Community Advisory Committee
- Seniors Rights Victoria, Advisory Committee
- Spotlight on Invisible Women
- Supreme Court Funds in Court Human Rights Advisory Committee
- Victoria Police, Disability Portfolio Reference Group
- Victoria Police, Mental Health Portfolio Reference Group
- Victoria Police, Seniors Portfolio Reference Group
- Victorian Electoral Access Advisory Group
- Victorian Electoral Commission, Disability Action Plan Advisory Committee
- Victorian Public Service, Diversity and Inclusion Community of Practice
- Victorian Public Service Enablers Network
- Women with Disabilities Victoria, Prevention of Violence against Women with Disabilities Advisory Group
- Women with Disabilities Victoria, Spotlight on Invisible Women Project Advisory Group.

Appendix D

Financial Report for the year ended 30 June 2021

Table 25. Continuing operations	Note	2021 $000's	2020 $000's
Income from transactions			
Output appropriation		12,251	12,206
Grants		3243	3239
Other income	1	62	212
Total income from transactions		**15,556**	**15,657**
Expenses from transactions			
Employee expenses	2	13,220	12,287
Depreciation and amortisation		83	86
Interest expense		9	9
Grants and other transfers		0	0
Supplies and services	3	2043	2422
Total expenses from transactions		**15,355**	**14,804**
Net result from transactions (net operating balance)		**201**	**853**
Other economic flows included in net result			
Other gains (losses) from other economic flows		1	0
Total other economic flows included in net result		**1**	**0**
Net result		**202**	**853**

Note 1: This amount relates to income received from Corrections Victoria to fund OPA's Corrections Independent Support Officer program ($15,500) and other transfers to OPA trust funds.

Note 2: Growth reflects increased provision for annual leave due to leave not being taken by staff during COVID-19, increases under the Victorian Public Service Enterprise Agreement 2020 and the payment of a fortnightly remote working allowance to all staff working from home.

Note 3: Cost decrease relates to significant reduction in travel and accommodation, printing, contractors, motor vehicle and other operating costs with a slight increase in information technology and staff training expenditure.

Office of the Public Advocate

Office of The Public Advocate
Level 1, 204 Lygon Street
Carlton, Victoria 3053
DX 210293 Ph: 1300 309 337
NRS: 133 667
Fax: 1300 787 510
www.publicadvocate.vic.gov.au