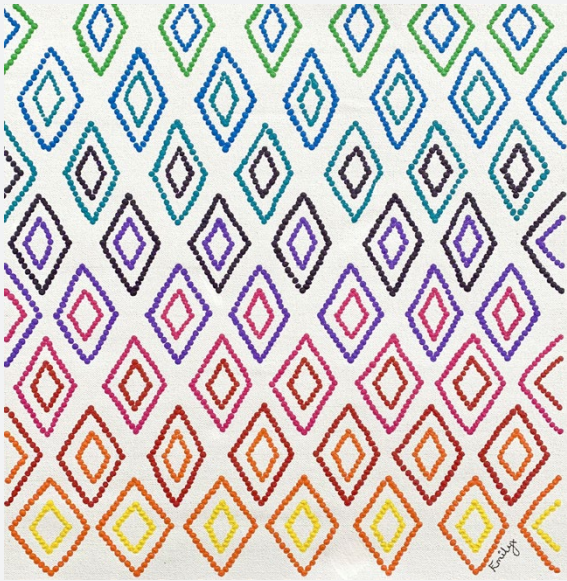


Office of the Public Advocate

Safeguarding the rights and interests of people with disability

# Annual Report 2022





## About the cover image

*Many Paths Travelled*

By Emily, Wurundjeri people, 2021

40cm x 40cm

Acrylic on canvas

## Artist's Statement

I've had to travel many different paths to learn my culture and embrace it and also complete my healing journey after I received an Acquired Brain Injury (ABI) six years ago.

Each colour is the path I have travelled. The orange and yellow is when I did my crime. The red and orange is when I was in hospital in a coma. The pink and red is me learning about my ABI. The purple and pink is me starting to live with a brain injury. The dark purple and light purple is the learning of my Aboriginality and being sentenced to prison. The aqua and dark purple is the beginning of my prison sentence and learning about jail life. The light blue and aqua is when I picked up a paint brush and painted my first ever painting. The light green and light blue is me finally feeling myself for the first time in many years also including when I received this ABI that changed my life and my family's life.

## The Torch program

This artwork was purchased by the Office of the Public Advocate from The Torch program.

Since 2011, The Torch has been providing art, cultural and arts industry support to Indigenous offenders and ex-offenders in Victoria through its Indigenous Arts in Prisons and Community program.

The program supports the development of self-esteem, confidence and resilience through cultural strengthening and artistic expression. It assists artists to reconnect with culture, earn income from art sales (with 100 per cent of the artwork price going directly to the artist), foster new networks and to pursue educational and creative industry avenues on their release.

By embracing program participants as artists rather than offenders, The Torch provides an avenue to change.

## Acknowledgement of Country

This report was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all First Nations people whose social and emotional wellbeing continues to be negatively affected by discrimination, racism, child removal and other devastating ongoing effects of colonisation.

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# Message from the Public Advocate

In OPA's 35th year of operations, our mission to protect and promote the rights, interests, and dignity of people with disability continues to guide the work of the office. Significant changes to the way in which services are funded, delivered, and regulated and the ongoing effects of the COVID-19 pandemic have profoundly affected the lives of the people with disability we work with. I am exceptionally proud of the way in which OPA's staff and volunteers have risen to these and other challenges once again this year.

## Impact of the NDIS

The impact of the National Disability Insurance Scheme (NDIS) continued to be felt by people with disability, particularly in access to services and housing, with consequent impact on OPA's work.

The NDIS's goal of creating choice and control in the lives of people with disability has resulted in a proliferation of new providers and participants receiving services from multiple providers. This, coupled with the absence of funding for plan coordination, can lead to fragmentation of service delivery. These circumstances can also place participants at risk of slipping through the cracks where service providers assume that someone else holds responsibility for their safety and wellbeing. We have seen this issue create unique complexities for people who are subject to Supervised Treatment Orders.

Difficulties accessing NDIS services has been an issue for participants who require specialised and intensive coordinated support, sometimes resulting in people being stuck in restrictive environments or put at risk. This may occur because the participant's plan is not sufficiently funded for their needs or an appropriate service provider is not available due to behaviours associated with the person's disability, or because there are simply no services available. The critical shortage of behaviour support practitioners is just one example of this market failure. Whilst the Victorian Government has done work in this space, there remains no provider of last resort to step in when this occurs.



”

**Together we continue to strive for a just and inclusive society that respects and promotes the dignity and human rights of all people.**

## Guardianship

The NDIS has also impacted the use of, and the cohort of people under guardianship. The largest group of people under guardianship has changed from older people with dementia, to people with an intellectual disability, followed by people with mental health issues. The advent of choice and control has not been accompanied by sufficient adjustments or support for decision-making, resulting in an over-reliance on the guardianship system.

People are also staying under guardianship for longer as a result of the NDIS, often because of delays in securing housing or services and service agreement requirements. OPA processed 3500 NDIS service deeds during the year, reflecting the fact that people with an OPA guardian have an average of five service agreements each.

## Housing

The entry of new NDIS providers to the sector and the establishment of new service models to better meet individual needs can result in services being established outside existing regulatory frameworks, thereby undermining existing protections for security of tenure and other residential rights. We have also seen decreased understanding by Supported Disability Accommodation providers of their obligations under the *Residential Tenancies Act 1997*.

Systems to ensure that the Community Visitors program is informed of houses eligible for visits have not kept pace with change and the number of new providers coming into the sector. OPA continues to advocate for reform to better protect the residential rights of these residents.

## Supported Residential Services

In Victoria, there are increasing numbers of SRS proprietors setting up NDIS businesses. With both disability and SRS services now operating at the intersection of state and federal legislation, there remains a lack of clarity about jurisdictional oversight and the authority of the Community Visitors' powers within the NDIS context. While OPA and Community Visitors have raised concerns about the condition of many SRS for over 30 years, issues arising at the crossover point with the NDIS have only heightened those concerns.

For example, I hold grave concerns about the commodification of vulnerable people with disability being targeted by unscrupulous providers to access lucrative NDIS funding packages. OPA also

holds concerns about providers dipping into NDIS funds to pay for services that are already included in the SRS fees. In many cases there is a lack of transparency and accountability about the use of NDIS funds. The challenge of protecting NDIS participants from financial exploitation is explored further in the article on page 7.

While the NDIS Quality and Safeguards Commission has identified the management of conflicts of interest by NDIS providers as one of its Compliance and Enforcement priorities for 2021-2022, the pace at which the SRS sector is evolving at the NDIS interface presents a challenge. Community Visitors therefore have a critical role to play in Victoria, and potentially nationally.

## Guardianship legislation

The *Guardianship and Administration Act 2019* (Vic) heralded a new human rights approach to the rights of people with disability. Actions taken under the legislation were to be directed to the greatest extent possible by the will and preferences of the person. The legislation intended that there be greater reliance on supported decision-making with substitute decision-making used rarely, very much as a last resort. Guardianship is only defensible if it is used as last resort after all other less restrictive options have been exhausted.

Regrettably the policy aspirations of the legislation are yet to be fully realised. Whilst there is scarce available data, anecdotally, there has been little uptake of the new options of personal or tribunal appointed decision-making supporters. For example, the OPA forms to appoint a supportive decision-maker were downloaded a combined total of 88 times, compared with 12,097 downloads of the forms to appoint a substitute decision-maker. Similarly, OPA is not aware of many cases in which the Victorian Civil and Administrative Tribunal has appointed a supporter.

This is largely attributable to the lack of properly funded and regulated advocacy and supported decision-making services. OPA has been adjusting its practices to ensure compliance with the new legislation. However, the impacts of the COVID-19 pandemic throughout most of the period of its operation has made it particularly challenging to establish the will and preferences of those we work with. A project was undertaken during the year to review existing literature and consider how supported decision-making could be realised within the scope of a guardianship order.

## Supported Decision-Making Project

Supported decision-making is one of the most important human rights concepts for people with cognitive disability. It points to the right of all people to receive the support they need to make their own decisions and to play an active role in decisions that affect them if they are made by others. This important concept is recognised by the new guardianship legislation that came into effect on 1 March 2020. It requires that guardians appointed by the Victorian Civil and Administrative Tribunal support the person they are representing to make their own decisions and be involved in substitute decision-making, as much as possible.

In recent years, OPA has undertaken significant work to understand and promote supported decision-making. In mid-2021, OPA launched the Supported Decision-Making Project to develop a shared understanding of supported decision-making practices for OPA guardians. Work is continuing, with the aim of collating and developing resources and tools to assist guardians in prioritising supported decision-making in their work.

## Adult safeguarding

OPA has long held concerns about the endemic levels of violence and abuse experienced by at-risk adults living in our community who, because of their care and support needs, may be unable to protect themselves from abuse or neglect. This year, OPA received 1348 calls from people raising concerns about neglect or abuse of people with disability. In many cases, the caller expects that OPA or another agency will take action to address those concerns. Unfortunately, that is not always possible as Victoria does not have a dedicated agency with responsibility to investigate complaints concerning all at-risk adults.

In 2014, the Australian Law Reform Commission in its *Elder Abuse – A National Legal Response* report recommended that adult safeguarding laws be enacted in each state and territory. Unlike other states and territories, the Victorian Government is yet to act on this recommendation. OPA's upcoming report on this topic *Line of Sight: Refocussing Victoria's adult safeguarding laws* is due for launch soon.

OPA also convened two National Elder Abuse Roundtables on this topic, attended by approximately 30 state, territory and federal bureaucrats and others with expertise in adult safeguarding to share developments and practice experience.

## Healthy Discussions project

In December 2021, I was thrilled to launch OPA's *HealthCARE Conversations* video produced as part of OPA's Healthy Discussions project. The project aims to improve communication between health practitioners and people with disability, and to improve understanding of disability. The video is available on the OPA website.

In closing, as I reflect on what has been yet another extraordinary and challenging year, I am reminded of the ongoing importance of our values of respect and compassion, and to promote the inclusion of people with disability in all aspects of life.

I am joined and supported in the pursuit of OPA's mission by incredibly dedicated and passionate staff and volunteers. I thank them for their formidable efforts to ensure that OPA's safeguarding functions continued, despite the devastating impacts that the pandemic has had on us all. I also wish to thank those who have worked with OPA and supported our work, to pursue the best possible outcomes for people with disability and mental health issues to enable them to live flourishing lives. Together we continue to strive for a just and inclusive society that respects and promotes the dignity and human rights of all people.

Dr Colleen Pearce, AM  
**Public Advocate**

# The challenge of protecting NDIS participants from financial exploitation

For a number of years, OPA Community Visitors have raised concerns about the variable living conditions and treatment of residents in Victorian Supported Residential Services (SRS). About 4000 people with disability live in SRS in Victoria. These residents pay the bulk of their pension for sometimes substandard accommodation.

The introduction of the NDIS has provided the opportunity for people with disability to access services that have not previously been available, often greatly improving their lives. However, these additional funds have also put some SRS residents at risk of financial exploitation by providers who operate both SRS and NDIS businesses and seek to influence residents to use only their businesses.

Since the introduction of the NDIS, Community Visitors have reported that residents at some SRS had felt intimidated or had been influenced to choose only the SRS proprietor's NDIS business for their NDIS service provision and were now being charged for services, such as assistance with showering, that had previously been provided as part of the Residential and Services Agreement.

There were also situations of NDIS funds being spent too quickly, and people being left without funding or being charged for services they didn't receive. OPA received reports, from relatives and external service providers on behalf of residents, of poor quality care, bullying and coercion. These were followed up by Community Visitors and reported to the Human Services Regulator for investigation.

The Public Advocate brought the issues to the attention of the Minister for Disability, Ageing and Carers in December 2020 and documented the

most concerning practices to the NDIS Quality and Safeguarding Commission in early 2021. A collaborative arrangement was subsequently established between the NDIA Quality and Safeguards Commission and the Victorian Human Services Regulator to investigate the issues.

Ultimately, applications were made to VCAT for guardianship orders for some residents at two SRS to make sure that their interests were protected, and the Public Advocate was appointed guardian.

Over time, the guardians were able to find out what the people were entitled to in their NDIS plans and whether they were receiving this. This included undertaking company searches to understand who was involved and whether providers had a conflict of interest or were charging the person inappropriately.

In addition, residents and guardians reported:

- residents feeling intimidated and influenced to choose the proprietor's business for their NDIS service provision, enabling full control of the residents living in their facility and reducing the potential for external scrutiny
- residents being denied access to NDIS support workers of their choice if they were not employed by the owner's business
- reports of residents being coerced into staying at SRS when they have been looking for alternative accommodation

- residents being refused access to their NDIS plans
- residents signing documents for accommodation and services without understanding what they were agreeing to.

OPA guardians collated information about these issues and raised concerns with police, State Trustees Limited, the SRS regulator, and the NDIS Quality and Safeguards Commission Complaints Manager in an attempt to protect the interests of residents involved and to support a Quality and Safeguarding Commission investigation.

In a series of articles in September 2021, The Age highlighted concerns about service providers seeing NDIS participants as a “business opportunity” and ‘competing ... to access their lucrative funding packages’.<sup>1</sup>

In September 2021 the Victorian government announced the creation of a new independent social services regulator, with reforms for SRS to be phased in by 1 July 2023.

A new protocol was implemented between the Community Visitors Program and the Human Services Regulator to facilitate more effective pathways for escalating issues of concern and an improved risk-based framework for investigating and monitoring compliance with the SRS Act. Two of the SRS involved were placed into administration in January 2022 and one was deregistered in June 2022.

The Public Advocate welcomes the action that has been taken in these cases and the introduction of improved oversight and regulation of SRS but considers that more needs to be done to ensure that there is effective oversight of providers operating at the interface of SRS and NDIS. Regulation must take a human rights approach that values quality of service and opportunity for choice and control, and residents should be

supported to exercise this through access to advocacy and support for decision making.

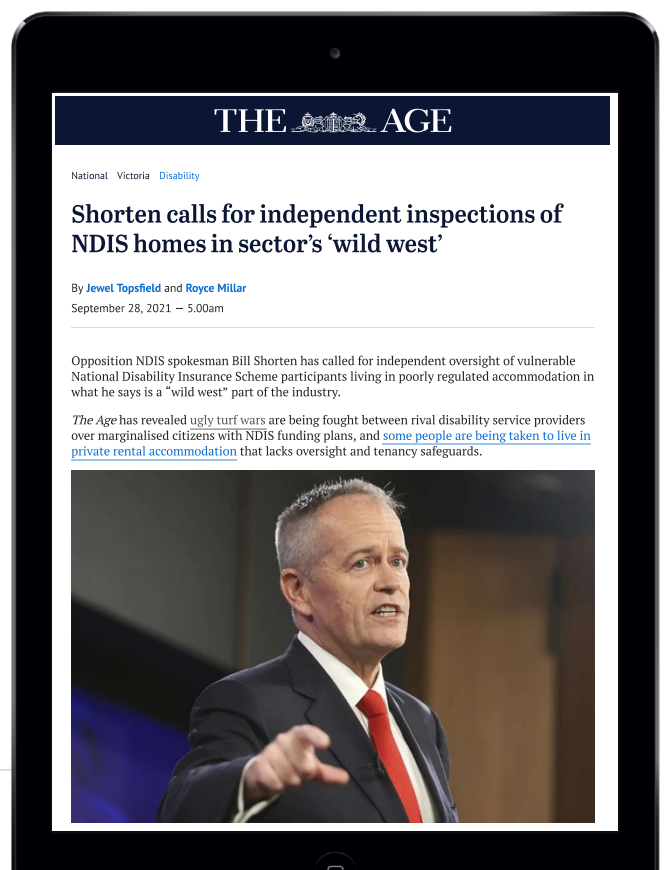
State and federal governments need to work together to develop comprehensive guidance regarding the regulation of congregate care providers who are also NDIS providers. This should include a joint State Commonwealth taskforce with the powers necessary to investigate any instances of exploitation, fraud or coercion impacting on the state regulated SRS sector and the Commonwealth funded NDIS scheme.

A fit and proper test needs to be part of the provider registration process and, in general, support coordinators should be required to be independent of a participant’s accommodation and support providers.

Finally, Community Visitors require adequate powers under the NDIA Act and sufficient funding to undertake their vital safeguarding role, for which they are renowned, of identifying the early warning signals of system failure.

The Public Advocate stands ready to work with the Victorian and Australian governments and agencies to ensure that the NDIA delivers on its promise of choice and control for all participants, and that people living with a disability in private and supported accommodation settings are free from harm, abuse and neglect.

<sup>1</sup> R Millar and J Topsfield, ‘[Ugly turf war as service providers tussle over NDIS clients with disabilities](#)’, *The Age*, 20 September 2021, accessed 28 July 2022; J Topsfield and R Millar, ‘[Shorten calls for independent inspections of NDIS homes in sector’s ‘wild west](#)’, *The Age*, 28 September 2021, accessed 28 July 2022; R Millar and J Topsfield, ‘[Home for vulnerable needs to clean up its act or close, says Labor MP](#)’, *The Age*, 29 September 2021, accessed 28 July 2022.



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# 2022 Achievements

## Guardianship



Guardianship for  
**1976**  
Victorians

**972**

New guardianship matters

**6.79 decisions made** per matter for NDIS matters, nearly twice as many as for non-NDIS matters (3.69)

**3500**

NDIS service deeds completed



**72%**

of eligible guardianship clients were participants of the NDIS

---

## Investigations



**457**

Investigations conducted for VCAT

## Medical decisions

**417**



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

## Volunteer Safeguarding



**3411** visits, made by **334 Community Visitors** and **102 trainees**

**1246** facilities visited and **5472** issues identified

Rights of **2783** people in **3969** police interviews protected by **155** Independent Third Persons



**Prisoners were supported** in 49 disciplinary hearings

## Advocacy

Advocacy provided **297**



**15** submissions



Provided regular input to

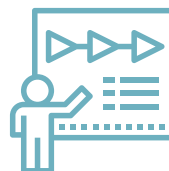
**30**

external committees and advisory groups

## Engagement



**149,972** website users & **55,108** downloaded documents



**180 education sessions** for an audience of 3795

**1143**  
Subscribers to OPA Updates



**10,133**  
instances of advice provided

**1348** enquires relating to abuse



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# 1. Decision-making

## Providing statutory guardianship despite great challenges

It has been a challenging year for guardianship. Order numbers remained high and there were substantial obstacles to providing high quality service.

The new Guardianship and Administration Act commenced in March 2020. The emphasis in the new Act is to make decisions in line with a represented person's will and preferences and for people to be supported to make decisions where possible. Where a person's will and preferences cannot be established, decisions are made on the basis of personal and social wellbeing as assessed by the guardian. Decisions contrary to will and preferences can only be made in circumstances which involve serious harm.

### The continuing impact of the pandemic on guardianship

This year saw the continuation of many challenges relating to the COVID-19 pandemic. There were 2 lockdown periods over this financial year totalling 89 days which required significant changes to guardianship practice. Face-to-face visits with represented persons, family members or supporters and service and accommodation providers could only occur in exceptional circumstances. Instead, guardians had to rely on phone or video communication. However, many people OPA work with have little or no access to technology or struggle to communicate and understand via these means, impeding the ability of guardians to establish their will and preferences as required under the Act.

### VCAT delays

Lockdowns impacted on the number of hearings held by VCAT, meaning that guardianship orders that might otherwise have been revoked continued to remain in effect. This impacted on the capacity of guardians to pick up new matters, contributing to the waitlist.

### Guardianship orders

OPA must accept all guardianship matters where it is appointed by VCAT. This year, VCAT made 972 guardianship orders. This included 26 urgent orders which equates to one per fortnight. An additional 1004 matters were carried over from orders made in previous years.

Reappointments were 32 per cent (307) of all matters this year compared to 42 per cent (403) of matters last year, with a proportionately higher number of new appointments this year: 665 (68 per cent of all matters) this year compared to 561 (58 per cent) in 2021.

There were over 100 matters where guardians provided a report to VCAT for a scheduled reassessment hearing but where hearings are yet to occur. This added to workload pressures as in some instances these cases required further active management from guardians in the interim or will need an updated report when the hearing eventually occurs. A proportion of these matters would have been revoked at hearing as the guardian had made the decisions necessary including building supports around the individual so that guardianship was no longer required. These delays have impacted guardians' capacity to pick up new cases. OPA is working with VCAT to address this problem.

**Table 1.** Guardianship orders made, 21/22

Guardianship orders	Temporary/ Urgent guardianship	Total
946	26	972

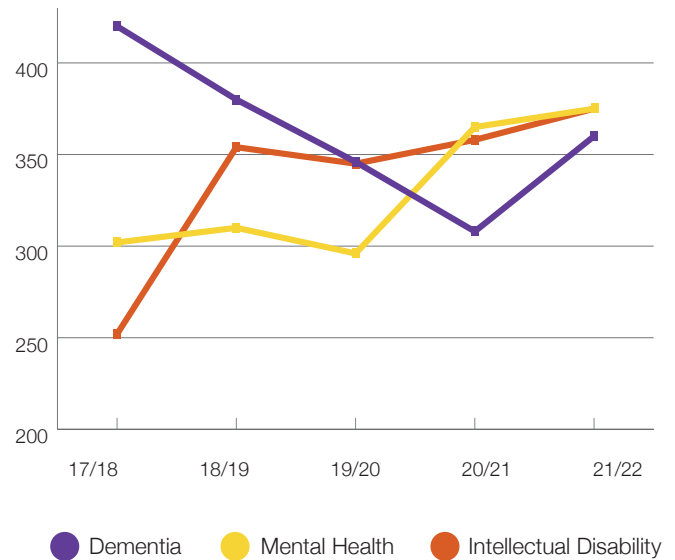
Other factors which impacted guardianship this year include demographic changes of clients, increased complexity particularly associated with the NDIS and the additional requirements to ascertain and make decisions in accordance with the person's will and preferences under the new Act.

## Guardianship demographics

### Changing disability profiles

The last 5 years have seen a change in the disability profile of individuals referred to OPA. In 380 or 39.5 per cent of matters, the person had a diagnosed intellectual disability, and a similar proportion had a diagnosis of mental illness. There were also 361 people with dementia.

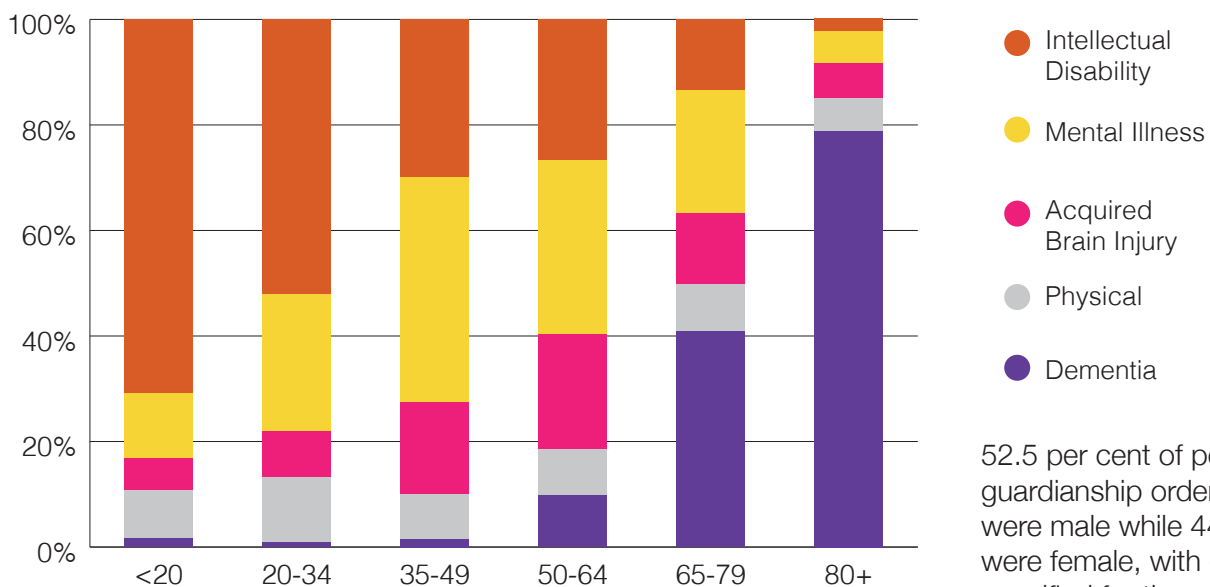
A number of people had more than one diagnosis, meaning that they are likely to need to access services across multiple service systems, making the role of a guardian more intensive and complex.



**Figure 1.** Changing demographic - disability types, 17/18-21/22

## Disability by age

The number of people with a diagnosis of mental illness was consistent across all age groups. Intellectual disability was most common in younger people and dementia was most common in people over 80. The mix of disabilities in the 65-79 age grouping was quite varied when it might have been expected that dementia would be more dominant.



52.5 per cent of people under guardianship orders with OPA were male while 44 per cent were female, with gender not specified for the remainder.

**Figure 2.** Disability breakdown by age, 21/22

## Waiting list

Orders received from VCAT are triaged and placed on a waitlist, 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. Time before allocation to a delegated guardian varies and, the larger the waitlist, the longer the wait for a delegated guardian.

Managing the increasing waitlist that peaked in quarter 3 was a key challenge this year. This was the result of a combination of factors: continuing high demand for guardianship, the accumulated impact of staff movements such as resignations, extended leave or secondments and subsequent recruitment delays, as well as other operational demands, including difficulties with face-to-face visits. High case numbers placed pressure on all guardianship teams, particularly as high priority or urgent orders often take precedence over others already on the waitlist.

At the start of the year, there were 48 matters on the waitlist:

- the waitlist reached its highest point of 191 in quarter 3
- by 30 June, it had reduced to 157 matters
- days to allocation ranged from 28.46 in quarter one to 94.83 in quarter 4
- there was a 166 per cent increase in days to allocation this financial year compared to last year
- there was a slight increase in the allocation time for urgent guardianship orders.

**Table 2.** Average days to allocate a guardianship matter, 19/20-21/22

Days to allocation	19/20	20/21	21/22
Guardianship	30.49	23.97	63.77
Urgent guardianship	1.31	1.32	1.60

## Guardianship issues

**Table 3.** Top five issues leading to a guardianship order, 21/22

Issue Type	Total	%
Accommodation	611	72.3 %
Service issues, including case management	180	21.3 %
NDIS Issues	126	14.9 %
Health and medical treatment	79	9.3 %
Conflict - family	72	8.5 %

The need for accommodation decisions remains the overwhelming reason for a guardianship order.

Service issues including case management and NDIS remain high at just over 36 per cent which is a continuing trend over recent years. Health and medical treatment issues are consistent with last year's percentage though over time this category has declined markedly. Family conflict has increased slightly from last year, up from 7.7 per cent to 8.5 per cent.

Overall, these figures demonstrate the continuing impact of the NDIS on rates of guardianship, particularly because of the absence of case management.

## Complexity and workload

Guardianship work has become increasingly complex over the last few years. This is largely a function of the greater complexity in the service system for people with disability, most notably the impact of the NDIS resulting at times in a less reliable system of multiple providers without a provider of last resort. This system is less capable of meeting the needs of people who have multiple disabilities or who require specialised support. It is also less accessible to those who come from culturally and linguistically diverse backgrounds or who are involved with the justice system. This tends to result in guardians having to take more actions and make more decisions per matter than was required previously. It also commonly leads to substituted decision-making arrangements remaining in place for longer. Circumstances where there are different views in families are also likely to increase the amount of time needed for a guardian

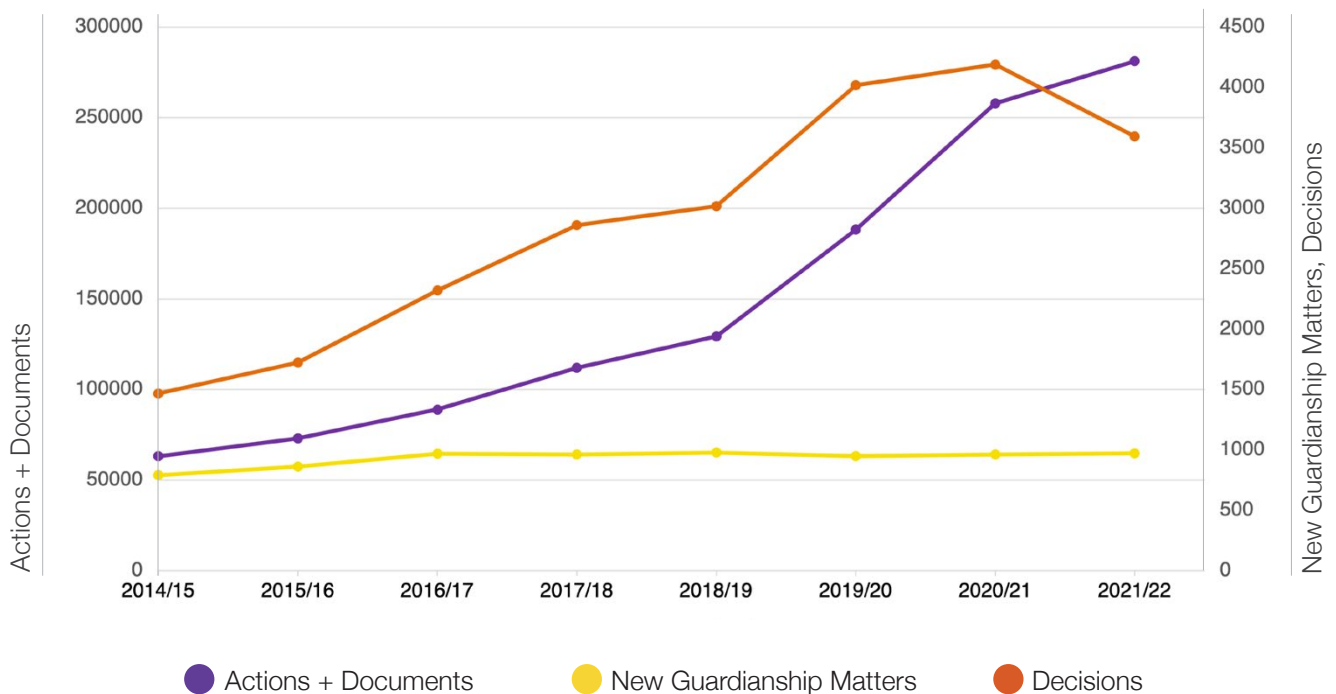
to make the decisions required and that an order is in place.

Complexity this year presents an interesting story:

- one per cent increase in guardianship orders over the previous year
- 23 per cent increase in actions and documents during the year, which amounts to a 216 per cent increase over 5 years
- a 14 per cent decrease in decisions compared to last year.

**Table 4.** Guardianship orders, decisions and actions and documents, 21/22

Year	Guardianship orders	Decisions	Actions and documents
21/22	972	3596	281,202
20/21	964	4190	257,890
19/20	950	4019	188,192



**Figure 3.** Comparison of guardianship orders, actions and documents, and decisions, 14/15-21/22

Previously, OPA used the number of decisions, actions and documents to measure complexity. This year, as part of the review of the program by an external consultant, a new multi-dimensional tool to measure complexity was created and circulated to all guardianship staff early in 2022. Following a 3 month pilot of the tool, it was modified and refined.

The complexity tool will now be rolled out across the program over the coming year to better understand complexity and its relationship to workload.

## Coercive authority: The use of section 45 orders

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

In such instances, a hearing must be held and a formal order, now made under s.45 of the Act, must be made by VCAT. The principal use of such orders is to facilitate the transport to hospital of a person who is unable to appreciate the need for treatment for reasons relating to their disability.

Section 45 orders can be made where necessary to ensure that a person complies with a decision of their guardian. This year, 26 s.45 orders were made by VCAT. Less than half of these orders were used as in some instances the individual ultimately agreed to comply with the guardian's decision. However, this is the first full year of these figures under the new Act and it may take some time until there is a clear baseline.

**Table 5.** Use of Section 45 orders, 21/22

Order type	No.
Order used for ambulance attendance transport	9
Order used for forced entry	5
Order used for police attendance	1
Order used for chemical restraint	1
Order used for physical restraint	1

## Guardianship in Hospitals Project

This is the second year of the project funded by the Department of Health and builds on both the previous year as well as the pilot funded by five Victorian Health Networks. The project aims to address health service concerns about timely decision-making and discharge planning for their patients where the Public Advocate has been appointed as guardian.

Like all other OPA programs, this project has been severely impacted by the pandemic, especially the restrictions and lockdowns which reduced the opportunities for guardians to visit represented persons.

### Lack of face-to-face visits

The supported decision-making principles underpinning the new guardianship legislation require a guardian to assess the capacity of the represented person to make a decision for themselves, for example about where they should live post-discharge. Ideally, the guardian would make a face-to-face visit, sometimes more than once, to assess and support this. Guardians adapted to visiting restrictions through the use of video conferencing and phone calls but for some of the people this was not possible or of limited use. Increasing workload issues also meant that in some instances it was not possible to visit a person more than once to ascertain their will and preferences.

This often resulted in delays in when a decision could be made about where the person would go when they left the hospital. This was compounded in many cases by the difficulties in putting adequate support services in place for discharge back into the community. As a result, the guardian had to remain involved with the person for longer to finalise their situation, thereby reducing their capacity to pick up new matters. This is reflected in the increase in the average number of days from when OPA received the VCAT guardianship order until it was allocated to a guardian for active management, impacting on the number of allocations this year.

### Difficulties accessing NDIS supports

Difficulties in accessing NDIS supports were a common issue due to delays in the person being accepted as a participant or delays in having their plan accepted or reviewed. This was often exacerbated by market failure for appropriate support services and the absence of suitable housing for people with complex needs. Early in 2022, for example, 5 out of 6 patients under guardianship at Monash Medical Centre had their NDIS Supported Independent Living funding declined. In other instances, the NDIA would not fund equipment that was a long-term requirement to enable the patient to be discharged to the community.

It is usual practice to seek early revocation of hospital guardianship orders when all required decisions have been made, however NDIS-related delays often prevented early revocation. This resulted in OPA retaining carriage of these matters for much longer than occurred during the pilot phase and the first year of this project. The lack of suitable discharge options continues to have negative impacts on people with disability who remain in inappropriate hospital environments and to impact hospital capacity.

In addition, staff turnover in the first part of the year and recruitment delays impacted the project.

**Table 6.** Average number of wait days to allocation, 21/22

Quarter	Allocations	Average wait days
1st	56	18
2nd	43	24
3rd	44	54
4th	62	52
<b>Full Year Total</b>	<b>205</b>	<b>37</b>

## Hospital stakeholder engagement

The Hospital Project Team Leader continues to hold bi-monthly meetings with the lead social workers at hospitals to discuss mutual issues and further develop their understanding of the Guardianship and Administration Act and the role of guardianship in discharge decisions.

The Hospital Project team leader also meets monthly with the NDIS Hospital Liaison managers to facilitate better outcomes for patients under guardianship and escalate issues as they arise. In addition, next year OPA will facilitate training to improve understanding about the role of a guardian and when guardianship is necessary. This training should result in fewer guardianship applications and a reduction in discharge delays.

Regular meetings are also held between OPA, the Hospital team and the NDIA Community Education and Engagement Team to focus on the NDIS issues affecting hospital patients under guardianship.

## Lee's story - Giving effect to will and preferences in guardianship

In 2020, Lee, 49, was having difficulties managing the day-to-day running of his home and the property was becoming unliveable.

He collapsed at home and was admitted to hospital. While being treated, Lee expressed a strong desire to return home once he was discharged but hospital staff were concerned about his ability to do so safely, and recommended he be discharged to supported accommodation.

Following an application to VCAT, the Public Advocate was appointed as Lee's guardian with authority to make decisions limited to accommodation and access to services, and State Trustees Limited was appointed as administrator with authority to make financial decisions.

By the time a guardian was assigned to Lee, he had been in hospital for eight months. After consulting with Lee and others, the guardian gave effect to Lee's will and preferences, as required by the new Guardianship and Administration Act, by making a decision that he could return to live at home, once services were in place. While Lee was already an NDIS participant, he needed additional assistance to get the supports he needed to live independently. The guardian engaged an NDIS support coordinator.

Due to the COVID-19 pandemic, it took a very long time for the necessary supports to be put in place and for Lee's home to be cleaned and made safe for him to live in. Lee moved temporarily to a boarding house where he continued to express a strong desire to return to his own home. He also wanted to manage his own finances. The OPA guardian advocated for Lee to take part in a financial independence program, so he could learn and practice the skills needed to manage his own money.

Lee accepted the NDIS supports OPA had facilitated and attended financial counselling.

The OPA guardian then set up a Statement of Support for NDIS Services and worked with Lee's NDIS support coordinator to ensure Lee continued to receive the NDIS services he needed when the guardianship order was revoked.

Earlier this year, VCAT revoked both the guardianship and administration orders as, due to the supports put in place by both OPA and State Trustees, there were no longer any decisions to be made that Lee couldn't make for himself.

Lee is now living safely in his own home and managing his own money, in line with his will and preferences and his human rights.

# Investigations

When VCAT receives an application for administration or guardianship, it sometimes asks OPA to first investigate the matter. This work helps VCAT decide whether guardianship or administration is necessary or if there is a less restrictive option available.

There were slightly fewer referrals from VCAT for investigations this year compared to last, likely reflecting the smaller number of hearings conducted by VCAT due to lockdowns and the move to phone or video conferencing hearings in 2021.

There were also delays in determining whether a guardianship or administration order should be made once an investigation report had been submitted due to challenges in conducting VCAT hearings. This includes 17 matters at the end of the year where the investigation report had been provided but a hearing was yet to be scheduled.

VCAT is working collaboratively with OPA to schedule matters for hearing as soon as practicable after investigation reports have been submitted.

There were an increased number of referrals to investigate the need for guardianship for reasons related to the person being an NDIS participant. Matters involving enduring powers of attorney increased the complexity of issues addressed in OPA's investigations.

**Table 7.** VCAT referrals to OPA, 19/20-21/22

19/20	20/21	21/22
430	425	384

**Table 8.** Average days to allocate an OPA investigator, 19/20-21/22

19/20	20/21	21/22
11.3	9.1	17.2

**Table 9.** Top reasons for VCAT referring investigations to OPA, 21/22

Issue type	Total
Evidence of need for order	246
Evidence of capacity	126
Possible breach of duties by financial attorney	65
Conflict between individuals	59
Evidence of disability	45
Accommodation	34
Welfare and safety at risk	26
Possible breach of duties by personal attorney/enduring guardian	25
Possible financial exploitation	16
NDIS	14
Medical treatment	14

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

## Demographics

Just over 54.6 per cent of investigations were for persons over 65 years of age, an increase of 21.5 per cent over last year.

Dementia was the most common disability in matters referred for investigation at 49.3 per cent. The second most common disability was mental health, followed by intellectual disability.

**Table 10.** Disability types for OPA investigation, 21/22

Disability type	Total	%*
Dementia	173	49.3 %
Mental Health	106	30.2 %
Intellectual Disability	92	26.2 %
Acquired Brain Injury	51	14.5 %
Physical	52	14.8 %
Not specified	33	9.4 %

\*These percentages do not add up to 100% due to multiple disabilities for individual matters.

More than one third (33.3 per cent) of the 457 investigations completed this year led to applications for guardianship being 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.

Five investigations involving the possible need for special medical procedures were completed. Special medical procedures are those which can render a person permanently infertile, terminate a pregnancy or transplant tissue. They include proposed procedures associated with gender reassignment. Applications for special medical procedures are inherently complex and troubling for investigators due to the enormity of the matters involved.

Five referrals were received from the courts (one from the Supreme Court, 2 from the County Court, and 2 from the Magistrates' Court) concerning self-represented litigants who appeared to need a guardian, supportive guardian, administrator or supportive administrator.

## Impact of COVID-19

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

Ascertaining the will and the preferences of a person who is subject to emotional, psychological or financial abuse by their primary carer, who may or may not live with them, continues to be the most difficult aspect of investigations. Investigating and quantifying undue influence and coercion also continues to be a challenging task.

Challenges associated with retention, recruitment and training of staff due to short-term contracts that could not be renewed because of budget constraints continued to impact capacity this year. Despite these ongoing setbacks, the team functioned efficiently and provided a high quality service to VCAT and contributed significantly to OPA's important safeguarding function.

## Bruce's story

Bruce, 90, is a permanent resident in an aged care facility.

In May 2019, Bruce appointed two of his nieces as his personal and financial attorneys and medical treatment decision-makers.

In early 2021, Bruce was admitted to an aged care facility. Six months later, Bruce was admitted to hospital and discharged to his current residence, but the attorneys did not tell his daughters and other family members where he was. The attorneys claimed they were relying on their authority as personal attorneys to determine who could have contact with Bruce. However, one of his daughters had cancer, and was desperate to see her father while she still could.

VCAT referred the matter to OPA for investigation.

Bruce was interviewed by the OPA investigator and expressed his disappointment that he had not seen his daughters for some time. The investigator indicated in their report that Bruce had either forgotten that he had told his attorneys that he did not want to see his family or he had not been consulted regarding his attorneys' decision.

VCAT did not revoke or vary the powers but obtained an undertaking from the attorneys that they would take no further action to restrict access to Bruce by any persons. The attorneys gave the undertaking and also disclosed Bruce's location at the hearing.

This case illustrates the important work of the Investigations team in averting guardianship appointments by looking for the least restrictive means of promoting the personal and social wellbeing of a person with a disability.



*Stock image. Source: Envato*

# 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 when a patient lacks decision-making capacity, has not made an advance care directive and does not have a medical treatment decision-maker.

For significant medical treatment decisions, the health practitioner submits an online form to OPA requesting the Public Advocate to make a decision. OPA does not have a role in making routine, palliative or emergency treatment decisions. OPA is also the contact point for health practitioners to submit a copy of a medical research practitioner's certificate.)

## Medical treatment decisions

This year saw the lowest number of matters (417) come to OPA since the introduction of the Act in 2018.

This is likely a consequence of the COVID-19 lockdowns in the earlier half of the year, where access to inpatient and particularly outpatient services remained limited, with elective surgeries cancelled at one point.

Requests for decisions on COVID-19 vaccination decreased 58 per cent compared to last year and, of those, nearly half were subsequently identified by the health practitioner to be routine treatment (as the risks and side effects were no longer considered significant after a patient had received one or more doses without any adverse reactions) and, therefore, not requiring a decision of the Public Advocate. The overall reduction was considered to be because health practitioners were not considering COVID-19 boosters to be significant treatment where patients had not suffered any adverse reactions with their first two doses.

There continued to be a notable number of requests (22) where a health practitioner subsequently found that the patient did in fact

have a medical treatment decision-maker (as a person does not have to be appointed in order to potentially meet the criteria to act as a medical treatment decision-maker).

Also of note was that, in 12 of the requests, the health practitioner subsequently determined that the patient had regained their decision-making capacity and were able to make their own decision, and, therefore, there was no longer a role for the Public Advocate. It is pleasing to see health practitioners reviewing a patient's decision-making capacity and recognising that a lack of capacity can be temporary, or that a patient can have capacity if provided with time and practicable support.

This year, OPA commenced collecting data on requests that were not valid for the Public Advocate because the patient was subject to an order under the *Mental Health Act 2014*, having noted this was a frequent occurrence last year. When this is the case, in the absence of an appointed medical decision-maker, it is the role of the authorised psychiatrist, rather than the Public Advocate, to make treatment decisions.

The majority of decisions the Public Advocate made were for patients who were in hospital (47 per cent) followed by planned outpatient treatment (23 per cent), the commencement or continuation of medication, including the COVID-19 vaccine (22 per cent) and then dental (8 per cent). Requests relating to medications are slowly growing, which may indicate there is increasing familiarity by health practitioners of their obligations to obtain a medical treatment decision for medications.

There remained a number of 'other' outcome types (23), ranging from the request not meeting the legal definition of being 'medical treatment'; that the treatment would lead to permanent infertility (and, therefore, an application to VCAT was required); or that the request was a form of chemical environmental restraint, not considered to be part of a medical treatment.

## Restraint and medical treatment

On occasion, a health practitioner proposes that medication be used as a form of restraint in order that medical treatment can be undertaken, for example, a general anaesthetic for a patient whose disability or sensory sensitivities mean they would be too distressed and unable to comply with instructions.

Each time, the OPA officer needs to establish with the health practitioner whether such a proposal is justifiable and proportionate and why less-restrictive options are not possible before determining if this can be consented to. However, for example where medication, such as an antipsychotic is proposed solely to control or modify the patient's behaviour, this is likely to be chemical restraint and, therefore, not meet the definition of medical treatment.

No medical treatment decision-maker including the Public Advocate, has the power to authorise forcible physical restraint to overcome a patient's resistance to medical treatment. Where a form of physical restraint is proposed by the health practitioner, the OPA officer and the health practitioner need to establish whether this is 'forcible'. If so, consent can only be provided by VCAT.

## Distribution of matters

This year, the top 5 metropolitan health networks seeking a decision were: Alfred Health (44), Melbourne Health (35), Monash Health (28), Peninsula Health (23) and Western Health (22).

The top 5 rural health networks seeking a decision were Bendigo Health (12), Ballarat Health (6), Swan Hill District Health (6), East Grampians Health (3) and Central Gippsland Health (2).

Overall, there were 22 requests from dentists and 34 from GPs.

## Length of time to make decisions

The length of time to make decisions is comparable to previous years, with approximately 70 per cent made within 5 days and 30 per cent taking 6 days or longer.

The OPA Medical Decisions Team, which services the whole of Victoria, remains small, funded for only three staff, and each request must adhere to the legislative obligations required of a medical treatment decision-maker to make a decision.

**Table 11.** Comparison of OPA medical treatment matters, 19/20-21/22

Matters	19/20	20/21	21/22
s.62	2	1	6
s.63	413	468	368
s.81	13	16	15
Extension of consent	38	39	28
<b>Total</b>	<b>466</b>	<b>524</b>	<b>417</b>

**Table 12.** Outcome types of OPA medical treatment matters, 21/22

<b>Section 62</b>	<b>6</b>
<b>Section 63</b>	<b>368</b>
Treatment consented to	229
Treatment deemed to be routine	27
Medical treatment decision-maker found	22
Other	23
Offer of treatment withdrawn	19
Treatment deemed to be emergency	22
Capacity regained	12
Patient under Mental Health Act	8
<b>Treatment refused</b>	<b>1</b>
<b>Section 81</b>	<b>15</b>
Legislative requirements met	12
Legislative requirements not met	3
<b>Extension of consent decisions</b>	<b>28</b>
<b>Total</b>	<b>417</b>



## Calen's story - Promoting personal and social wellbeing

Calen, 51, is single and lives in supported accommodation.

He enjoys going out for walks, listening to music and participating in a day program.

Calen has an intellectual disability, autism, a mental health diagnosis and minimal verbal communication skills. When people who Calen doesn't know touch him, he sometimes responds with avoidance or aggression. This makes it difficult for medical staff to examine him or treat him when issues arise relating to his body and physical health. It is difficult to explain to Calen in a way that he can understand, what and why medical treatment is being proposed.

Because Calen finds it difficult to engage with health practitioners, investigation and assessment of his health had been limited and his GP was concerned about possible underlying health conditions. While staff can, at times, observe from Calen's behaviour that something may be wrong, Calen does not always communicate if he is in pain or discomfort and the GP had no definitive information.

Further, his GP noted, Calen was now at an age where people were routinely offered screening and, if necessary, treatment for possible heart, bowel or ear issues, as well as blood tests as part of a general check-up, vaccinations and access to podiatry and dental services.

Calen was assessed by his GP as lacking the decision-making capacity required to make his own decisions about a number of proposed treatments. He had demonstrated he was unable to understand or retain the information required, and unable to weigh up the information as part of the process of making a decision. Calen has no family members or other people in his life who could act as his medical treatment decision-maker.

Calen's health practitioners advised that dental treatment proposed for him required a general anaesthetic because it was expected fillings or tooth extractions would be needed. Calen's history indicated he would be unable to tolerate multiple treatments (in addition to dental treatment, blood tests, an ECG, an x-ray, podiatry and general external physical examination were recommended).

It was, therefore, proposed that the other treatments occur while he was under the general anaesthetic for the dental treatment.

While recognising Calen's behaviour suggested a preference against any medical treatment (albeit without any known reasons about why), the OPA officer was unable to find out from him any other views or values he may have held about the medical treatments. While the OPA officer believed Calen valued being active and social as he seemed to enjoy his day program and going for long walks, this was not enough information on which to make a medical treatment decision. The OPA officer, therefore, had to make a decision which would promote Calen's personal and social wellbeing.

The OPA officer decided that consenting to the medical treatments, particularly when they could all occur at once, under an already existent general anaesthetic, would promote Calen's personal and social wellbeing by optimising his health and facilitating the early and timely exploration of any further medical issues. In addition, that the proposed treatments could reduce the risk of Calen suffering pain, discomfort or morbidity as the result of an undiagnosed condition(s).

The OPA officer determined that consenting to the treatments would maintain Calen's ability to continue to engage in activities and lifestyle of his choosing.

## 2. Advocacy

Advocacy involves standing beside the person with a disability, promoting their rights and interests and, if necessary, working to protect them from exploitation, abuse and neglect. Advocacy occurs across the office - in guardianship and investigation, through the Advice Service, from the Disability Act officers and via the Community Visitors Program. Advocacy varies from work directly advocating for individuals with a disability, which may be a short or longer-term intervention, to specialist and systemic advocacy related to OPA's areas of expertise.

### New advocacy matters 2021-22

Overall advocacy matters have decreased 15.6 per cent this year compared to last year. These matters include:

- work undertaken as part of the Public Advocate's advocacy role under the *Disability Act 2006*, including in relation to the use of restrictive practices and compulsory treatment for people with an intellectual disability
- the small number of matters referred for advocacy each year under the *Severe Substance and Dependence Treatment Act 2010* which are included as part of individual advocacy.

**Table 13.** New advocacy matters, 19/20-21/22

	21/22	20/21	19/20
Individual advocacy	35	60	58
Disability Act advocacy	143	165	126
Short-term advocacy	119	127	100
<b>Total</b>	<b>297</b>	<b>352</b>	<b>284</b>

### Individual advocacy

OPA receives many requests for individual advocacy for people with disability. These come through requests to the Advice Service, including from VCAT or external agencies such as Victoria Legal Aid. Due to resource restraints and statutory client service demand, OPA triages all advocacy

requests and refers wherever possible to other community sector agencies. However, where there are serious issues and no other options or other efforts have been ineffective, OPA continues to provide this advocacy.

- 65 per cent of individual advocacy was for people with an intellectual disability, compared to 39.5 per cent of guardianship matters and 26.2 per cent of investigations.
- 18.1 per cent of advocacy was for people with mental health issues, 15.4 per cent for people with an acquired brain injury and 15.4 per cent for people with physical disability
- 13 per cent of advocacy was for people with dementia, up from 7.2 per cent last year.

### VCAT liaison

OPA's VCAT liaison officer, generally based at VCAT but currently operating remotely, provides important support to the functions of 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 being appointed as a guardian or being the subject of a guardianship order
- provide advice to VCAT members on OPA's capacity and functions
- help other stakeholders better understand the role of guardianship and whether it is appropriate for their circumstances
- assist OPA staff appearing at VCAT.

In 2021, there were 277 liaison officer interventions compared with 314 the previous year. This includes consultations about whether guardianship orders are necessary and reasonable for young people transitioning out of the child protection system or if there are less restrictive options available. This year, there were 44 such consultations, with 28 proceeding to hearing and only 6 resulting in a guardianship order. This contrasts with the small number of cases where there was no VCAT liaison officer consultation: 6 matters heard, with guardians appointed in 3 or 50 per cent of cases, compared with 21 per cent where this liaison occurred.

# Systemic advocacy

OPA's systemic advocacy continued to be guided by the reform goals in OPA's current Strategic Plan. These are:

- to lessen the involvement of people with disability and mental illness in the criminal justice system
- identify ways OPA can continue and expand its safeguarding role
- improve the operation of the NDIS and elder abuse prevention and response strategies
- maximise the ability of parents with disability and mental illness to care for their children
- drive supported decision-making practice reforms and resource developments
- identify and propose solutions to service and regulatory gaps that significantly affect the lives of people with disability and people with mental illness.

OPA does this through initiating and drawing on research, engaging in targeted, evidence-informed systemic advocacy, and liaising and partnering with other organisations in seeking our reform goals.

## Disability Royal Commission

OPA has continued to engage with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission). In December 2021, the Public Advocate, an OPA Community Visitors Coordinator and two Community Visitors gave evidence at Public hearing 20: Preventing and responding to violence, abuse, neglect and exploitation in disability services (two case studies). The Public Advocate noted that there are several reasons why issues of resident-to-resident violence occur, including: the lack of appropriate accommodation options for people with an intellectual disability or mental health issues who do not want, or are not suited to living with others; the shortage of skilled behaviour support practitioners; the lack of funding available in NDIS packages; and delays in the NDIS plan review process. These factors can contribute to the criminalisation of people with disability. Other issues raised included the lack of access to family violence responses, the number of emerging disability accommodation models that sit outside the regulatory framework, and the lack of controls in relation to provider conflicts of interest.

## The experience of people from culturally and linguistically diverse backgrounds

OPA made a submission in response to the Disability Royal Commission issues paper on the experiences of culturally and linguistically diverse (CALD) people with disability. The focus of this submission was on the experience of more recent arrivals, including refugees, who had acquired a disability either shortly before their arrival in Australia or afterwards. It noted that Australia has a highly complex bureaucratic social service system which assumes either a high level of literacy in English, or a high level of written literacy in the person's native language. Language barriers are in many cases compounded by past traumatic experiences and the failure of some mainstream health and community services to support people from CALD communities. The submission made three recommendations:

- increasing cultural awareness within mainstream community organisations
- allowing migrants or refugees who have acquired disability since their arrival because of accident or misadventure access to the NDIS on compassionate grounds
- establishing a body within government that could support 'at risk' adults.

## Supported decision-making and guardianship roundtables

In June 2022, the Public Advocate attended 2 roundtable discussions hosted by the Disability Royal Commission. The first roundtable, on the topic of supported decision-making, examined proposals for how supported decision-making could apply within the context of guardianship and administration systems in Australia. The Public Advocate noted the importance of individualised, flexible, culturally safe support, ensuring that appropriate adult safeguards are in place and recommended that decisions of substitute decision-makers be subject to review.

The second roundtable focused on guardianship, and the Public Advocate noted that the proposed best practice model should remove all references to 'disability' and should require the decision

maker to use a substituted judgment approach. In other words, the decision maker should make the decision that they believe the person would have made if they had capacity to make the decision themselves. The Public Advocate also spoke of the changing nature of guardianship in Victoria since the introduction of the NDIS, and the importance of funding supported decision-making and independent advocacy among other things.

## Supported decision-making

One of OPA's strategic goals is to promote legal and policy reforms that enable and encourage supported decision-making developments, and to drive supported decision-making practice reforms and resource development

### NDIS supported decision-making policy

To this end, OPA made a submission to the NDIS on the development of its new supported decision-making policy. This submission was based on the experiences of OPA staff and volunteers and the people OPA work with and focused on the interface of supported decision-making with substitute decision-making.

The submission made recommendations about: the types of decisions that should come within the scope of the policy; funding of innovative programs to establish and train a cohort of independent decision supporters; the role of decision supporters where NDIS participants do not have anyone in their lives who can fulfil this role; and described how supported decision-making can address an over-reliance on substitute decision-makers for NDIS related decisions.

### External partnerships

OPA participated on a project led by Flinders University and the New South Wales Centre for Intellectual Disability titled "Bringing Supported Decision-Making to Behaviour Support". This project aims to improve the quality of behaviour support plans by developing resources that enable people with disability and their supports to use supported decision-making in developing high-quality plans in collaboration with behaviour support practitioners and NDIS providers.

OPA was also represented on: a working group on Improving Decision Support Referrals led by the Disability Advocacy Resource Unit; a Queensland University of Technology ARC Linkage Grant project to redevelop resources on supported decision making for people with dementia; as well as a Deakin University led piece of work to redevelop educative resources on working with people with informal communication, named 'Listening to People Rarely Heard.'

## Criminal justice system

OPA advanced its strategic goal to lessen the involvement of people with disability and people with mental illness in the criminal justice system by making two submissions and attending a consultation with one of the inquiry teams.

The first submission was to the Inquiry into Victoria's Criminal Justice System by the Legal and Social Issues Committee of the Victorian Parliament. Several recommendations of the Committee in its March 2022 report drew on OPA's submission and/or echoed OPA recommendations.

These included recommendations by the Committee for increased funding for the ITP Program, a requirement that Victoria Police seek an ITP when interviewing a person with cognitive disability or mental illness and the expansion and promotion of the CISO program. Both the Committee and OPA recommended improved identification of people with disability in Victorian prisons and improved data collection, measures to improve access to pre-release planning for people with disability and access to support services, including through improved processes for accessing NDIA funding, among other recommendations. In its submission, OPA also highlighted barriers to people accessing appropriate accommodation post release from prison and the lack of accommodation options.

Many of the recommendations in this submission were also made in OPA's submission to the Cultural Review of the Adult Custodial Corrections System. OPA also recommended that the Victorian Government, in its implementation of the Optional Protocol to the United Nations Convention Against Torture, designate the Victorian National Preventative Mechanism to conduct inspections of all places of detention and closed environments as a matter of urgency, and that it publish human rights principles and guidelines for Corrections Services.

In addition, OPA made recommendations for steps to improve prisoner understanding of the disciplinary hearing process and available supports, to reduce the number of minor offences proceeding to hearing stage and for people with disability to have improved access to legal and advocacy services to assist them navigate and access the justice system. The panel of independent expert advisers leading this review will report to the Minister for Corrections in December 2022.

## Adult safeguarding

OPA continued work to identify ways that OPA can continue, and expand, its safeguarding role in the context of a changing adult safeguarding environment.

### Disability Act

OPA made a comprehensive submission in response to the Department of Families, Fairness and Housing's Review of the Disability Act 2006 Consultation Paper, which included 69 recommendations. The submission covered the importance of human rights and inclusion principles, as well as issues relating to Community Visitors, residential rights, restrictive practices, compulsory treatment and forensic disability services. Alongside the well-known Community Visitors program, the Public Advocate also has safeguarding roles under the current Disability Act in relation to residential rights, restrictive practices and compulsory treatment, which protect and promote the rights of people with cognitive impairment. The effectiveness of all of these safeguards has been negatively impacted by the transition to the NDIS. OPA continues to advocate for measures which will redress these issues through the Disability Act review process.

### Adult safeguarding report

In 2020, the Victorian Government engaged OPA to identify options to safeguard at-risk adults as was recommended by the Australian Law Reform Commission's (ALRC) 2017 report *Elder Abuse - A National Legal Response*. The Victorian Government committed to undertaking this work in the National Plan to Respond to the Abuse of Older Australians. OPA's confidential report was provided to the Victorian Government in January 2021. In 2022, OPA commenced work on a public report on this topic, which is due for publication in August 2022.

## Adult safeguarding roundtables

OPA hosted two virtual adult safeguarding national roundtables to promote the progression of implementation of the ALRC *Elder Abuse — A National Legal Response* recommendations across all Australian jurisdictions. The Hon Kay Patterson AO, Age Discrimination Commissioner, provided an update on her activities and priorities at the commencement of each meeting, followed by updates from each jurisdiction facilitated by Dr John Chesterman, Queensland Public Advocate. The roundtables are attended by approximately 30 state and territory officials and provide a means for information sharing and learning from other jurisdictions in this space.

## NDIS

The NDIS continued to be a key target of OPA's systemic advocacy activities. OPA's systemic advocacy in this area aims to improve the operation of the NDIS so that its goal of radically transforming the lives of people with disability can be realised, and that all participants are involved in making the decisions that affect them.

In relation to the latter, as noted previously, OPA made a submission to the Disability Royal Commission in relation to the NDIS supported decision-making policy. The submission made recommendations to ensure that participants are able to access the support that they need and to address over-reliance on guardianship. OPA also made a brief submission on the Department of Families, Fairness and Housing's Specialist Disability Accommodation policies, suggesting minor improvements to promote compliance by providers with their legislative obligations.

### NDIS Home and Living Consultation Paper

OPA reviewed the NDIA's Home and Living Consultation Paper, which included strategies intended to promote participants' NDIS plan goals in relation to their desired living arrangements: their 'home'. OPA submitted there were many hurdles to participant safety in and experiences of 'home' that remained unaddressed. For example, as with many NDIA processes and expectations, their success is contingent on the participants' decision-making capacity or, alternatively, their access to trustworthy informal decision-making supports. If this gap is not addressed, participants will never feel 'at home'.

## NDIS Act Amendment Bill

OPA's submission to the discussion paper on the *NDIS Amendment Bill (Participant Service Guarantee) 2021* (Cth) made 12 recommendations. These recommendations endorsed measures that extended the human rights protections of people with disability. Such measures included the Participant Service Guarantee and changes to benefit people with psychosocial disability. OPA also recommended an increase in the number of people with disability sitting on the Board responsible for the Scheme as well as co-designing changes or improvements to the Scheme with people with disability. The submission also raised concerns about the way some providers of Supported Residential Services provided support as NDIS providers and the need for Community Visitors to be given the powers and authority they need to perform their role effectively.

## Joint Standing Committee Inquiry into NDIS Scheme Implementation and Forecasting


OPA continued to engage with the work of the NDIS Joint Standing Committee and made a submission to the committee's Inquiry on NDIS Scheme Implementation and Forecasting. The submission primarily addressed the interfaces of NDIS service provision with other non-NDIS services provided by state, territories and Australian governments, focusing on select elements of the aged care, health (including mental health), and justice service systems. The key concern was that the Scheme failed NDIS participants with complex needs and who require supports from both Commonwealth and state or territory governments. The subsequent committee report recommended that the Australian Government commission independent research into interfaces between the NDIA and mainstream services.

## Elder Abuse

OPA's systemic advocacy work also aims to improve elder abuse prevention and response strategies. OPA arranged and participated in a panel presentation titled *Adult safeguarding: Five years after the Australian Law Reform Commission report at the 7th National Elder Abuse Conference 2022, Walk the Talk*. The panel discussion provided an opportunity for delegates to compare and contrast the adult safeguarding arrangements in the five jurisdictions represented.

<https://nectarcc.eventsair.com/neac2022/>

In addition to this, OPA is represented on several elder abuse advisory committees, including: the Seniors Rights Victoria Advisory Committee; Eastern Community Legal Centre Elder Abuse Strategic Advisory Group; Victoria Police Elder Abuse Advisory group (Financial Elder Abuse Trial) Department of Families, Fairness and Housing Project Steering Committee: Integrated model of care for responding to suspected elder abuse; and the Victoria Police Financial Elder Abuse Trial Advisory Group, among others.



**OPA's systemic advocacy work also aims to improve elder abuse prevention and response strategies.**

*Stock image. Source: Envato*

## Parents with disability

OPA has continued to advocate at a systemic level for families with disabilities so that they are provided with the support and assistance they may need to safely retain or resume the care of their children. For example, OPA was also briefed on proposed forthcoming amendments to the Children, Youth and Families Act and, while supporting some aspects of the Bill, raised concerns with government about the impact of other aspects of the bill on families with disabilities. OPA also came together with a number of other Victorian advocacy organisations to consult with researchers commissioned by the Disability Royal Commission on parents with disabilities involved in the Child Protection system. Work has also commenced on a submission to the Royal Commission on the issue of parents with a disability in the child protection and family law systems.

## Service and regulatory gaps

In its work, OPA is well placed to identify, and propose solutions to, service and regulatory gaps that significantly affect the lives of people with disability and people with mental illness

## Mental health

The Victorian Mental Health Royal Commission recommended the repeal of the Mental Health Act and a range of goals for its replacement. The Mental Health and Wellbeing Bill was introduced into Parliament in June 2022. OPA has contributed to the development of this bill in multiple ways, including its submission to the public consultation in August 2021 and as a stakeholder. OPA's submission supported the introduction of a non-legal mental health advocacy service, highlighted the importance of having people with lived experience in the system's leadership roles, and sought to strengthen Community Visitor safeguards among other things. OPA was pleased to see many of its recommendations reflected in the bill introduced into Parliament.

## National Disability Advocacy Strategy

OPA attended a consultation on the draft National Disability Advocacy Framework 2022-2025, for Commonwealth funded disability advocacy services. This consultation was attended by funded disability-advocacy organisations and individual advocates. The main themes that emerged were chronic underfunding of disability advocacy agencies, which meant that vulnerable people needing advocacy missed out because of inadequate resources. This meant that some people needing assistance with an NDIS matter could not get support from community based advocacy because the sector was overloaded. There is also a false perception that community disability-advocacy agencies can resolve all issues through advocacy. The framework barely mentions co-design and did not refer to people who had cognitive impairments and were unable to avail themselves of advocacy without someone approaching advocacy agencies on their behalf.

# Disability Act and Residential Tenancies Act

## Residential matters

Under the Disability Act and the Residential Tenancies Act, the Public Advocate has safeguarding responsibilities for people with disability living in two types of accommodation: group homes and SDA where there is a SDA residency agreement in place. These Acts require service providers or other specified persons to notify to the Public Advocate of particular actions taken or proposed in respect of a person's residential rights.

The Public Advocate also receives safeguarding requests from service providers, support coordinators, family members and others in circumstances where notification is not expressly required under either Act ('non-statutory notifications'), such as where a resident is being threatened with eviction.

**Table 14.** Residential notifications received by the Public Advocate, 19/20-21/22

Notification type	19/20 <sup>1</sup>	20/21	21/22
Notices of temporary relocation	17	30	37
Notices to vacate	10	5	12
Notices of residents' intention to vacate	3	11	8
Identified failures to issue statutory notice	7	5	14
<b>Total statutory notifications</b>	<b>37</b>	<b>51</b>	<b>71</b>
Non-statutory notifications	46	31	22
<b>Total notifications</b>	<b>83</b>	<b>82</b>	<b>93</b>

On receiving a residential notification or discovering a situation where a notice should have been issued, OPA seeks information to understand the circumstances, consider the person's will, preferences and support needs, and assess the appropriateness and likelihood of mediating a return to their principal accommodation. As part of the response, OPA also examines providers' compliance with their statutory obligations and provides education and information about these matters.

With the NDIS rollout now complete, this year has seen a significant growth in the number of SDA providers, as well as the transition of nearly all remaining Disability Act group homes to regulation as SDA properties under the Residential Tenancies Act. Despite the requirements having been in place since 2019, OPA continues to find that many SDA providers remain ignorant or confused about their obligations to SDA residents under the Residential Tenancies Act. OPA became aware of at least 14 situations this year where a statutory notice

<sup>1</sup> The 19/20 and 20/21 figures differ slightly from those reported in previous annual reports due to reconciliation against OPA's current data capture methodology. Non-statutory notifications have not previously been reported for 19/20, and were reported as 'Other residential matters' in 20/21.

should have been issued but was not. However, while the overall number of notifications to the Public Advocate increased this year, OPA believes that SDA provider non-compliance is likely far more widespread given the known frequency of movement in the SDA system.

The number of notices to vacate issued this year increased, following the expiry of the COVID-19 Omnibus (Emergency Measures) Act that prevented the issuing of a notice to vacate to an SDA resident between March 2020 and March 2021.

OPA also continues to see high numbers of notices of temporary relocation issued. Concerningly, the proportion of notices issued on the basis of the resident’s behaviour – often due to unmet support needs associated with their disability – has increased significantly (49 per cent this year, up from 16 per cent last year). In these circumstances, OPA provides significant advocacy (including referrals) for the person to help ensure their statutory rights are upheld, adequate supports are in place, and eviction and homelessness are avoided.

Mediating a SDA resident’s return to their home is complicated in the NDIS landscape by the fragmentation of responsibility across multiple service providers involved in supporting an individual. Securing alternative accommodation and adequate supports often requires an urgent review of the person’s NDIS plan, which may take many months. The absence of a provider of last resort places pressure on the person’s support coordinator and the NDIS market to supply options. Unfortunately, the market does not always deliver, leaving homelessness or unsuitable, insecure accommodation a possibility in many situations.

Since the rollout of the NDIS, OPA has witnessed a growth in novel accommodation arrangements for people with disability that sit outside the regulation of the Disability Act, Residential Tenancies Act and Supported Residential Services (Private Proprietors) Act 2010. These are often established and managed by an NDIS provider. OPA has raised with the Victorian Government its concern about the security of tenure of residents in such unregulated accommodation and advocated for legislative reform to better protect the residential rights of people with disability.

## Compulsory treatment in detention

OPA provides advocacy to people subject to a supervised treatment order (STO) (or an application for an STO) made under the Disability Act. STOs are civil orders authorising the detention of persons with intellectual disability for compulsory treatment. The purpose of such treatment is to reduce their risk to the community, as well as to benefit the person by maximising their quality of life and increasing their opportunity for social participation.

OPA also provides advocacy for people with intellectual disability admitted to a residential treatment facility under a criminal, quasi-criminal or post-sentence order for compulsory treatment.

**Table 15.** Individual advocacy provided in compulsory treatment matters, 19/20-21/22

19/20	20/21	21/22
38	47	67

While the total number of STOs remain relatively low, this year saw another significant increase in the number of compulsory treatment hearings at VCAT that warranted OPA advocacy due to their complexity.

The operation of STOs in an NDIS context continues to present legal issues, administrative barriers and practical challenges to the making and oversight of orders and the effective implementation of the treatment plans that underpin them. Some of these challenges include:

- the fragmentation of delivery of services between multiple providers working with the individual who is subject to the STO. The lines of responsibility and information-sharing arrangements between the person’s support coordinator, behaviour support practitioner, authorised program officers and other service provider staff are often unclear. This can be challenging and frustrating for the authorised program officer who applied for the order and is formally responsible for implementing the treatment plan because the situation requires coordination and a degree of supervision of services for which they were not funded nor

operationally responsible. This can also affect the smooth implementation of the treatment plan and effectiveness of oversight of providers, to the detriment of the person subject to the STO

- poor alignment between a person's NDIS goals and funding and the supports required to implement compulsory treatment and supervision for risk-reduction purposes. The interface between the supports appropriately funded by the NDIS and services which remain the responsibility of the state remains frustratingly unclear. At times, this results in services which are essential for the person's progression under the treatment plan not being available to them, hindering their ability to work towards less-restrictive arrangements
- responsiveness to the person's needs and changing circumstances is slower through the NDIS. Getting funding for the required supports will often require an NDIS plan review, which may involve extensive assessments that also need to be funded. These processes can take many months to resolve, with the person subject to the STO being inadequately supported or unable to progress towards less-restrictive arrangements in the meantime
- NDIS providers not being qualified to provide supervision or not adhering to supervision requirements when providing services in the community. This can lead to preventable incidents occurring that can impact on the person's progression to lower levels of supervision.

OPA has raised these concerns as part of the review of the Disability Act that is underway.

The Public Advocate also has a formal safeguarding function in relation to persons informally detained outside the statutory framework in the Disability Act. The complexity and limited understanding by some providers of the NDIS (Restrictive Practices and Behavioural Support) Rules (Cth) has increased the risk of persons being detained outside the statutory framework.

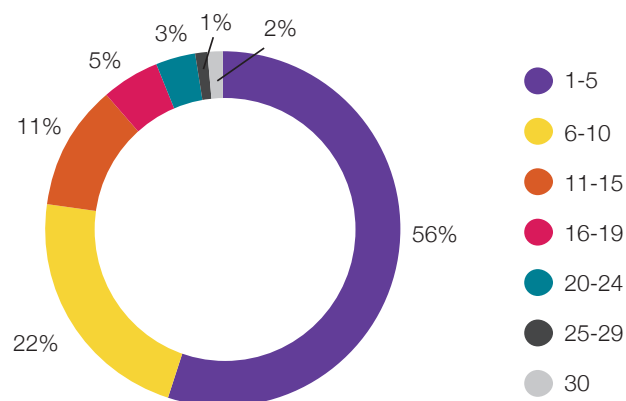
# 3. Safeguarding

## OPA volunteers

Volunteers at OPA come from a wide range of backgrounds, life experiences, skills, cultures and communities. Some dedicate their time to more than one program.

Volunteers cover a wide age demographic: the youngest is 20 years old and the oldest is 89 years old.

They dedicate significant time, effort, and commitment to their roles, with some volunteering overnight and on weekends. New volunteers are inducted regularly, and some have been volunteers at OPA for over 30 years.



**Figure 4.** OPA volunteers' years of service, 21/22

OPA supports 650 volunteers across three programs.

**Community Visitors** are Victorian Governor in Council appointees who have powers to make unannounced visits to accommodation facilities. They monitor and report on the quality of life and standard of services provided to people with disability and/or mental illness.

Community Visitors are appointed under 3 separate Acts of Parliament: the Disability Act, Mental Health Act, and Supported Residential Services (Private Proprietors Act).

**Table 16.** OPA volunteers, 21/22

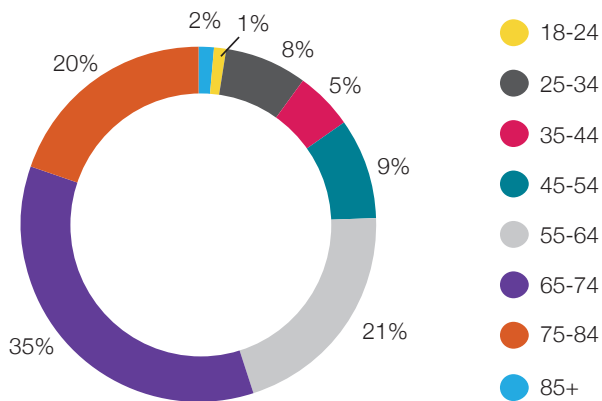
Program area	Number of OPA volunteers
Community Visitor – Disability Stream	241
Community Visitor – Residential Stream	71
Community Visitor – Mental Health Stream	71
Community Visitor – Trainee	
DS Trainees	74
RS Trainees	17
MH Trainees	27
Independent Third Person	156
Corrections Independent Support Person	4
Community Guardians	10
<b>Total</b>	<b>671</b>

**Independent Third Persons (ITPs)** attend police interviews 24/7 to support alleged offenders, victims and witnesses with cognitive impairment such as intellectual disability or acquired brain injury, and people with a mental illness.

**Corrections Independent Support Officers (CISOs)** attend Governors' disciplinary hearings at all adult prisons in Victoria supporting prisoners with a diagnosed intellectual disability.

OPA previously supported the Community Guardianship Program with volunteers appointed by VCAT to represent people with cognitive impairment and/or mental illness when they were unable to make lifestyle decisions for themselves.

OPA suspended the program in July 2021 for a range of reasons outlined in last year’s annual report.



**Figure 5.** OPA volunteers by age, 21/22

## Volunteer recruitment

The COVID-19 pandemic has had a significant impact on volunteer numbers and availability during the year.

Many are cautious about exposure to COVID-19, or reluctant to undertake visits remotely. The opening of international borders has also decreased the pool of available volunteers as people catch up on delayed travel plans.

Local newspapers and Volunteer Resource Centres have previously been strong sources of volunteer recruitment for OPA, but many have closed as a direct result of the pandemic. Despite these challenges, this year, OPA responded to over 600 enquiries from prospective volunteers and inducted 74 new volunteers, with more recruitment underway.

## Training and remote visiting

OPA’s volunteers receive intensive training to undertake their complex roles, and, during the year, over 110 training sessions and webinars were held online and face-to-face.

During the pandemic lockdowns, volunteers adapted quickly and at short notice, switching

between face-to-face visits to remote safeguarding conducted by phone and video. Remote visits remain a last resort option where the prevalence of the COVID-19 virus makes visiting unsafe.

## Volunteer survey results

During the year, OPA undertook its first volunteer survey which was designed and developed by staff and volunteers. The results include:

- 98 per cent of ITPs and 93 per cent of Community Visitors rated their experience as good to excellent
- 81 per cent of ITPs and 84 per cent of Community Visitors rated OPA’s training as good to excellent.

Significantly, while the volunteering sector has seen a sharp drop in volunteers returning to their roles since the pandemic, 98 per cent of ITPs, and 95 per cent of Community Visitors reported that they still expected to be volunteering for OPA in 12 months’ time.

**I absolutely love my role. I have learnt so much and am very grateful to be involved in such important work.**

– Community Visitor volunteer



# Community Visitors

## Visits

During the year, 334 appointed Community Visitors and 102 trainees conducted 3411 visits either remotely via phone or video conference or through face-to-face visits.

A total of 1246 facilities were visited and 5472 issues were identified.

Over the last year, there was an increase in calls to OPA's Advice Service requesting a visit by Community Visitors, particularly during the lockdowns, as people faced restrictions on visitors and leaving their residences. Community Visitors played a vital safeguarding role during this time, and were able to report and escalate critical issues, despite visiting remotely.

## Challenges

The Disability Services Stream of the program reported challenges with:

- widespread violence and abuse between people who live in shared accommodation, with few options to move to a home that is safe, keeping them in dangerous situations for months and years
- keeping track of enrolments of new and existing SDA properties in the absence of a formal notification procedure between the NDIA and relevant agencies including OPA, and no increase to OPA's funding that has resulted in hundreds of new facilities not being visited at all
- ongoing problems with proper access to incident reports, potentially preventing Community Visitors from reporting on serious abuse and neglect.

Community Visitors visiting patients in mental health facilities reported on the impact of restrictions in mental health facilities across the state, with some patients having no visitors or NDIS support staff allowed in for months, and severely limited activities on-site with patients spending long periods of time in their rooms and having extended stays.

Residential Services Community Visitors (in SRS) noticed a significant improvement in the responsiveness of the new Human Services Regulator's notification system, and were pleased to see SRS deregistered where there were repeated major breaches of basic standards of care.

All three streams reported severe staffing shortages across the state despite service providers undertaking intensive and creative recruitment efforts, creating serious risks for people who rely on skilled and familiar staff to maintain a reasonable quality of life.

## Recruitment and appointments

OPA staff manage complex processes to recruit, train, and then recommend Community Visitors for official appointment by the Governor in Council each year.

The appointment of new Community Visitors has been difficult during the pandemic. Trainee Community Visitors must undertake visits in person before they can be recommended for official appointment, but were unable to complete their quota of visits due to lockdowns and health risks. There were also delays to the official appointment of Community Visitors by the responsible Ministers due to other commitments and some changes in portfolio responsibilities.

The Governor in Council appointed 44 Community Visitors including some that were recruited last year, and 66 existing Community Visitors were reappointed for another 3 year term. Despite the challenges of the pandemic, the Community Visitors Program recruited 72 new volunteers, overall.

**Table 17.** Appointment of Community Visitors, 21/22

Community Visitor Stream	No.
Disability	27
Mental Health	13
Residential Services	4
<b>Total</b>	<b>44</b>

**Table 18.** Reappointments of Community Visitors, 21/22

Community Visitor Stream	No.
Disability	40
Mental Health	14
Residential Services	12
<b>Total</b>	<b>66</b>

## Annual meeting

This year, the Community Visitors held their annual meeting on 24 June in-person and streamed online.

The Ageing, Disability and Carers Minister, Anthony Carabines, thanked Community Visitors for their tireless work over the year and presented volunteer awards, including 4 for 20 years of service and one for 25 years.



*Ageing, Disability and Carers Minister, Anthony Carabines.*

Melbourne Disability Institute director, Professor Bruce Bonyhady, made a presentation which was a highlight with his ideas about the future of the safeguarding role of Community Visitors under the NDIS.

## 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 as the Combined Board, which auspices 2 sub-committees for training and policy work.

The Combined Board met 4 times during the year and their work focussed on:

- vaccination and training mandates for Community Visitors
- establishing a new protocol with the Human Services Regulator
- high risk abuse referrals and complaints to statutory bodies.

OPA thanks outgoing Board members, Daisy Ellery (Disability) and Beverly Devidas (Residential) for their contribution to the Community Visitors Program, and welcomes Linda Peterson to the Disability Board, and David Stafford to the Residential Services Board. Craig Ng (Disability), Lynn Wallace-Clancy (Residential), Anne Fahey and Nicole Smyth (Mental Health) remain board members for 2022-2023.

# Independent Third Persons

## About the Independent Third Person Program

Independent Third Persons (ITPs) are volunteers who provide essential safeguarding support for alleged offenders, victims and witnesses who have a cognitive disability including an intellectual disability, a mental illness or an ABI in police interviews and procedures.

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

ITPs are trained to support and assist people to comprehend complex issues and information quickly, to understand their legal rights and be able to communicate with people in positions of authority. ITPs do not provide legal advice and are independent of the police process.

## Interviews

This year, ITPs attended the most interviews in the program's history with:

- 155 ITPs
- 2783 clients
- 3969 interviews
- 147 police stations and other locations across Victoria.

Remote attendance by phone or video accounted for 1057 or 27 per cent of interviews.

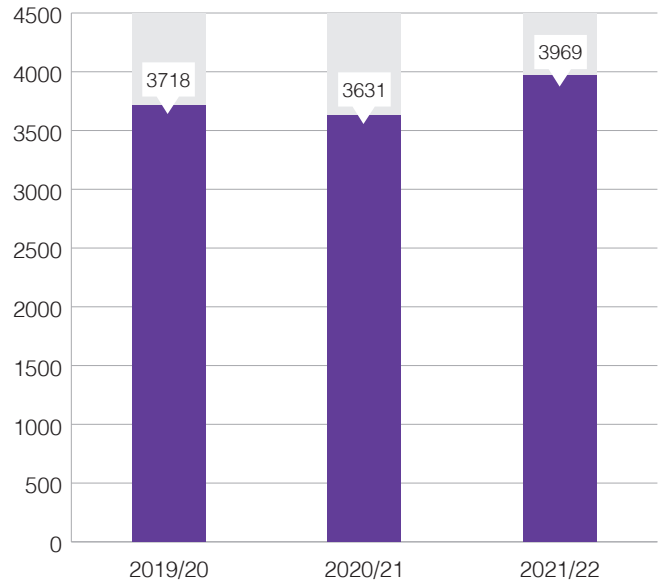


Figure 6. ITP interviews, 19/20-21/22

## Client type

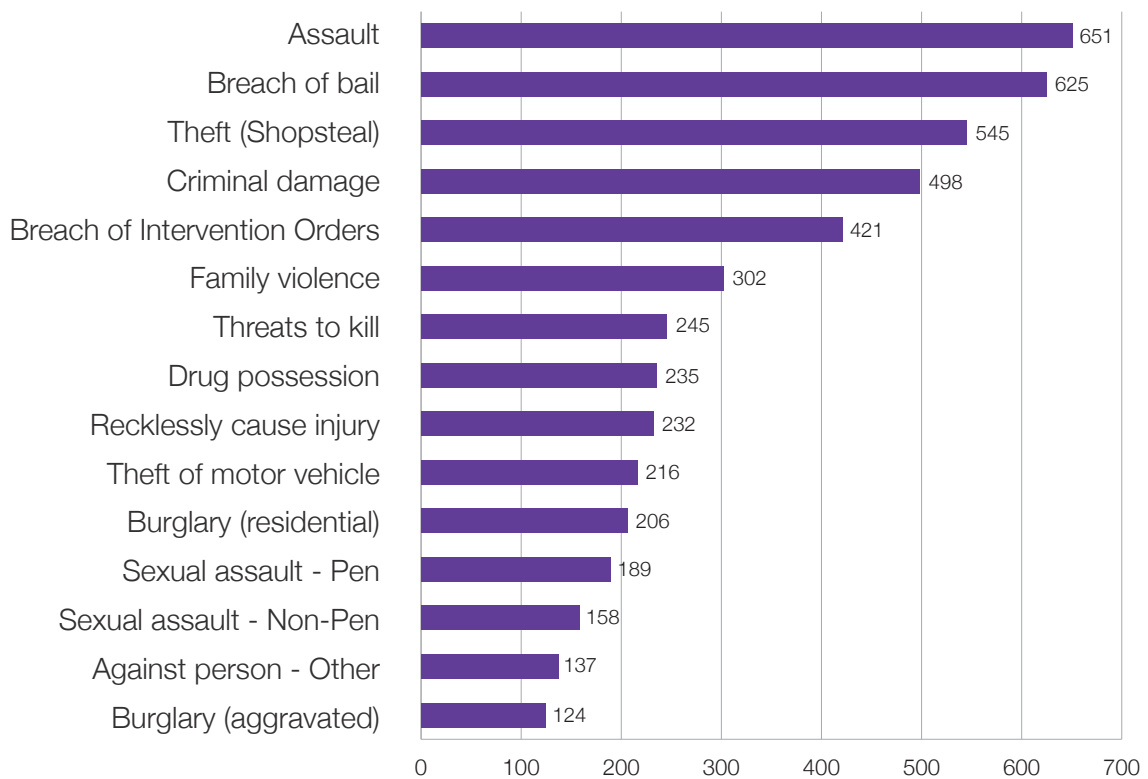
Alleged offenders continued to be the largest group with 3470 people (87 per cent) supported by ITPs. Victims constituted 7 per cent (282) while 2 per cent (82) were supported to make witness statements. ITPs attended annual sex offender register interviews for 135 people (3.4 per cent of all clients).

**Table 19.** First Nations client interviews attended, 19/20-21/22

Financial Year	Total ITP interviews	Count Aboriginal clients	Percentage of total
19/20	3718	697	18.74 %
20/21	3631	709	19.52 %
<b>21/22</b>	<b>3969</b>	<b>798</b>	<b>20.11 %</b>

First Nations clients made up 20 per cent of all interviews attended by ITPs across the state this year. In one regional station, 50 per cent of all interviews attended by an ITP were for First Nations clients, with four other regional stations recording over 40 per cent.

## Offence type



**Figure 7.** ITP alleged offender interview offence types, 21/22

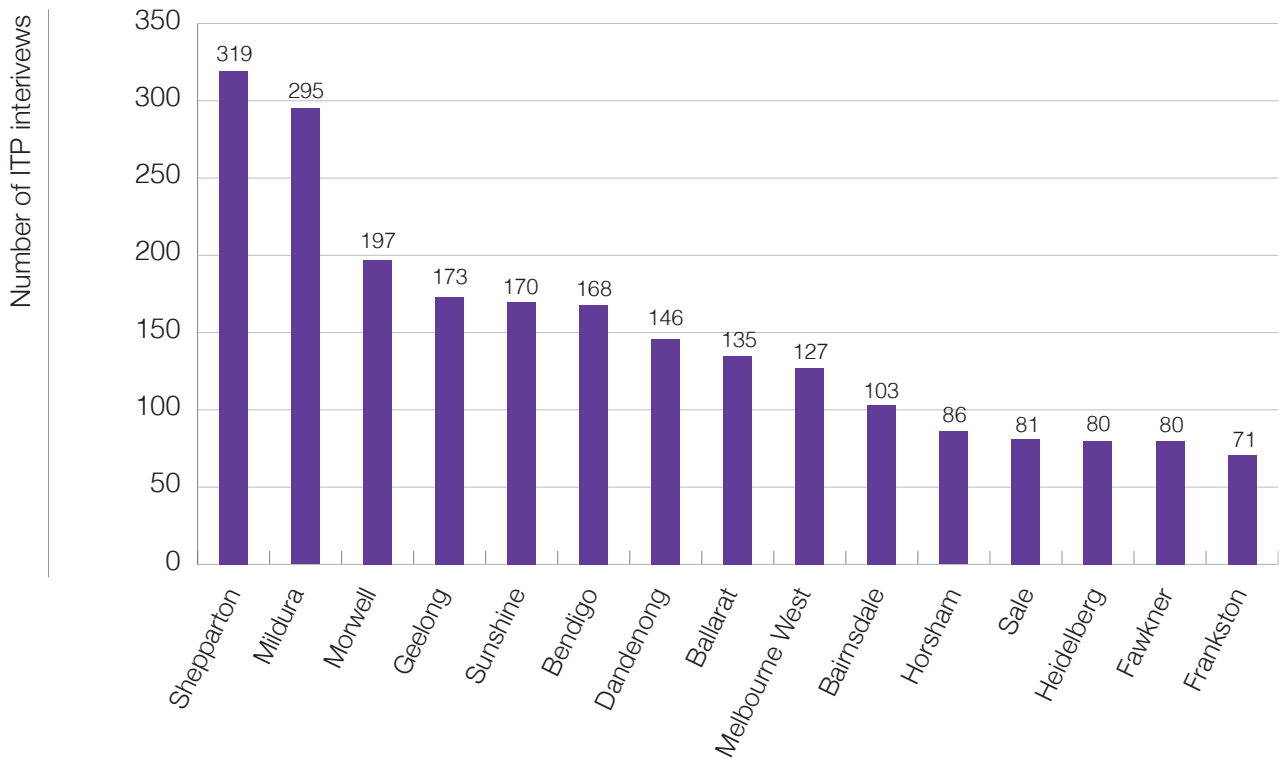
As in previous years, the program continues to support many matters related to assault offences, theft and breach of bail. The high number of people interviewed for breach of bail is particularly concerning given that many people with cognitive disability may not fully understand bail conditions and do not have adequate disability supports in place while on bail, putting them at high risk of new criminal offences being recorded.

During the year, one client in a regional area was interviewed by police 36 times. Almost all the interviews included charges relating to a breach of

an intervention order, contravention of a personal safety intervention order or committing of an indictable offence while on bail.

Another client in a different regional area was interviewed by police 28 times, with all of the interviews relating to theft and breach of bail conditions.

These examples highlight the need for adequate disability supports in the community to reduce the risk of new criminal offences being recorded for people with cognitive disability.



**Figure 8.** The 15 police stations which used the ITP service the most, 21/22 interviews

Figure 8 above shows the 15 police stations with the highest number of interviews attended by ITPs, with 9 of those in regional Victoria. This year, as in 2021, Shepparton utilised the service the most.

ITPs also attended interviews at client's homes, disability facilities, hospitals and prisons in Melbourne and throughout regional Victoria.

### Remote safeguarding and volunteer recruitment

The ITP program continues to offer both in person and remote attendance, a hybrid model established during COVID-19 restrictions.

This year, remote attendance was high due to a reduced number of ITPs available to attend interviews in person. The program relies on the support of Victoria Police to support induction for new volunteers, which has been complicated by the pandemic. There are 155 ITPs, with approximately 80 of those attending interviews this year.

### Safeguarding in prisons

Corrections Independent Support Officers (CISOs) are experienced ITP volunteers who also volunteer in the CISO program.

CISOs provide support and assistance to prisoners with a diagnosed intellectual disability when they come before a Governor's Disciplinary Hearing at every adult prison in Victoria. They explain prisoners' rights, check that they understand them, and support them to exercise these rights throughout the hearing process.

This year, 4 CISOs and one OPA staff member attended hearings.

Corrections Victoria and CISOs also began facilitating CISO attendance via video link as COVID-19 restrictions meant external visitors were not permitted within prisons for most of the year.

OPA holds ongoing concerns regarding the low number of requests for CISO attendance. Requests have decreased in recent years and even further this year from 62 hearings last year to 49 hearings this year, the lowest number of requests and hearings attended in the program's history.

OPA is also concerned that only a few prisons request the presence of a CISO. This year, 40 of the 49 hearings occurred at Port Phillip Prison.



**OPA responds to more than 14,000 calls each year from people with disability and their family, carers and friends.**

*Stock image. Source: Envato*

# 4. Engagement

## Advice and education

### Advice

OPA operates 2 phone advice lines: a general line and a medical treatment line for health professionals only. This year, OPA received more than 14,000 calls to these lines.

It also receives and responds to many enquiries electronically.

The general advice line provides information and advice on a diverse range of matters affecting people with a disability including allegations of financial or physical abuse, referrals to OPA's Community Visitors Program, applications to VCAT, powers of attorney, advance care planning and medical decision-making, administration and guardianship, and supported decision-making.

This year, the service provided 10,133 instances of advice and information, a 9 per cent decrease compared with last year. Most enquiries (86 per cent) were received via phone, with the remainder via email (13.1 per cent), letter and in person.

**Table 20.** Instances of advice provided by OPA, 19/20-21/22

Year	No.	% via email
21/22	10,133	13.1 %
20/21	11,619	14.4 %
19/20	12,624	8.5 %

The decrease in the number of enquiries and instances of advice and information provided may be partially explained by the introduction of regular online information sessions on topics that callers often wanted information about.

### Issue types

Issues raised by callers followed a similar pattern to last year.

A third of enquiries (34 per cent) related to guardianship and administration, including the role of guardianship and administration orders in safeguarding adults with disability and protecting their human rights.

Nearly a quarter of enquiries (23.5 per cent) regarded legal documents used in future planning (powers of attorney, advance care directives, appointing a medical treatment decision-maker and supported decision-making). This included enquiries about completing the forms and concerns about how existing documents were being used.

Issues relating to medical treatment decision-making and healthcare treatment, including mental health and end of life (palliative) care, were the topic of 16 per cent of all enquiries.

The number of calls related to the residential aged care sector increased from 77 last year to 193. In part, this may be attributed to the impact of COVID-19 and related restrictions on the aged care sector.

### Caller patterns

Caller patterns remain consistent with previous years.

Most calls were from family and friends of people with a disability (41.5 per cent), followed by professionals from the health sector (20 per cent), community sector (18 per cent) and government agencies (6 per cent). People calling on their own behalf constituted 10.9 per cent of callers.

### Community Visitor referrals

If there are concerns for the wellbeing of a person living in a disability group home, SRS or an inpatient of a mental health facility, the OPA Advice Service can make a referral to OPA's Community

Visitors Program which can arrange a visit to the service.

After last year's increases in referrals to mental health units and SRS, this year there was an overall decrease in referrals to 157, a 31.8 per cent decrease.

Most referrals about disability group homes are made by a person other than a resident. In mental health units and SRS, referral calls are generally made by residents. Continued lockdowns and limitations on the number of visitors permitted in homes due to the pandemic appear to have had a significant impact on referrals.

**Table 21.** Number of referrals from OPA's Advice Service to the Community Visitors Program, 19/20-21/22

Year	No.
21/22	157
20/21	230
19/20	255

## Abuse

This year saw a significant (34.8 per cent) increase in instances of suspected abuse, with 13.4 per cent of all enquiries (1348) raising concerns about one or more forms of abuse.

Following a similar pattern to last year, financial abuse was raised in 44.7 per cent of calls, neglect in 40.5 per cent, psychological or emotional abuse in 19.2 per cent, and other abuse (including sexual abuse, violence and impairment-related abuse) in 13.8 per cent.

## Advocacy

Recognising an increasing need to provide short-term advocacy for people with disability who have no other advocacy options, this year, OPA created a dedicated Advocacy Project Officer position, that commenced in January 2022. The role coordinates and manages advocacy requests, and assists in building advocacy capacity within OPA.

Short-term advocacy generally relates to assisting a person with disability address service or communication issues, and may include follow-up calls to clarify or obtain further information on their behalf.

This year, the Advice Service provided short-term advocacy in 75 matters, compared with 42 last year. Priority was given to complex matters identified by the Community Visitors Program.

This cross-program collaboration has helped improve the lives of people with disability, including those who reside in disability group homes, SRS, and mental health services.

## COVID-related issues

This year, OPA received 167 enquiries relating to COVID-19, a substantial increase from 74 last year.

While there were fewer enquiries about vaccine administration, issues relating to people with disability who were unable to access their vaccination certificates emerged including:

- some services only accepting digital vaccination certificates, creating further barriers for people with disability who did not have a MyGov account or a smart phone, or refusing to accept hardcopy evidence without photo identification
- those trying to assist the person facing barriers with Medicare that required them to have formal legal authority such as an enduring power of attorney or guardianship.

## NDIS

There were 263 enquiries this year where NDIS issues were the primary issue, a small increase over last year.

In keeping with the pattern last year, enquiries from NDIS support coordinators made up a substantial percentage of callers (4.5 per cent) with 453 calls to the service.

Consistent with last year, support coordinators regularly raised concerns about suspected or substantiated abuse and suspected fraud and misuse of funds by a service provider, participant's relative or friend, or were concerned that the participant's services had been cancelled by the plan nominee.

Advice Service staff continued to note a reluctance on behalf of support coordinators to escalate and act on concerns without the participant's consent.

Other enquiries included requests for individual advocacy and questions relating to consent issues, particularly regarding who could sign an NDIS service agreement on behalf of a participant with a decision-making disability.

## Education

While lockdowns and restrictions on public gatherings have made it challenging to plan traditional face-to-face information sessions, the widespread uptake of online technology has provided OPA with the opportunity to offer regular online information sessions.

From September 2021, OPA provided regular bi-weekly and monthly online information sessions on topics including powers of attorney, medical treatment decision-making and guardianship and administration. Participants did not have to register in advance: they could join via a publicly available link on the OPA website on the day.

This approach resulted in an increase in the total number of people attending sessions from 2273 last year to 3795 this year.

**Table 22.** Number of education sessions delivered, 19/20-21/22

Year	Sessions delivered	Audience
21/22	180	3795
20/21	73	2273
19/20	130	5182

This year also saw an increase in requests for tailored information sessions. Since the lifting of restrictions and lockdowns in October 2021, OPA has been able to facilitate sessions in-person, however, the majority continued to be delivered online.

## CALD communities

Four education sessions were delivered to CALD communities this financial year: Co.As.It (Italian), Pilipino Foundation and Chinese Parent Support Group Network (where two separate online sessions were held, one with a Cantonese interpreter and one with a Mandarin interpreter).

## 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.

OPA received \$450,000 in funding from the Australian Government Department of Social Services (DSS) to deliver the 2-year project which began in April 2020. It is one of several projects funded under the 2019-2020 Information, Linkages and Capacity Building: Mainstream Capacity Building Grant Round to contribute to improved health outcomes for people with disability.

Due to the impact of COVID-19, DSS granted OPA an extension of time to deliver the project. The project is now due for completion on 31 December 2022.

The voice of people with lived experience is at the heart of the Healthy Discussions project. Both the project's coordinator and project officer have lived experience of disability, as do members of the steering committee. The committee includes self-advocates with lived experience of intellectual disability, acquired brain injury and autism. It also includes a representative from the Centre for Developmental Disability Health Victoria.

This year, the committee continued to provide expertise about strategies for health practitioners to be able to communicate and engage effectively with patients with disability so that they are able to make informed decisions about their own health.

Positive outcomes were achieved under the program through:

- the 'HealthCARE Conversations' short video
- online information sessions for health practitioners
- a series of interviews on the theme of human rights that challenge assumptions the general community makes about people with disability.

## The 'HealthCARE Conversations' video

The 'HealthCARE Conversations' video, launched on 1 December 2021, is in a similar format to the ABC's TV series 'You Can't Ask That'. People with lived experience of disability were asked a series of questions with their answers illustrating positive strategies for health practitioners to effectively engage and communicate with patients with disability.

Dr Jane Tracy, from the Centre for Developmental Disability Health, described the importance of understanding individual needs of patients and why this was important when communicating and engaging with patients with disability so that they can make informed decisions about their own health.

More than 100 people attended the launch of the video and, as of 30 June, more than 500 people have viewed the video online:

<https://www.publicadvocate.vic.gov.au/opa-s-work/healthy-discussions-project/watch-online-healthcare-conversations>.

## Information sessions

More than 300 people attended 15 information sessions delivered by the project this year, including a series of online webinars on dignity and rights of patients with disability, and sessions delivered in conjunction with hospitals and primary health networks. Topics covered included effective communication with patients with disability, supported decision-making, and relevant legal obligations for health practitioners under the Medical Treatment Planning and Decisions Act. A theme throughout has been the right of patients with disability to be able to access the same level of high quality of healthcare as the general population.

## Human Rights Videos

The Healthy Discussions Project Officer has developed a series of audio interviews on the theme of human rights:

<https://www.publicadvocate.vic.gov.au/opa-s-work/healthy-discussions-project/human-rights-interviews>.



Stills from the 'HealthCARE Conversations' video, available on the [OPA website](https://www.publicadvocate.vic.gov.au).

## Clare's story - Short term advocacy

OPA's Advice Service received a call from Clare's health services case worker in relation to concerns he held for her safety and welfare.

Clare, 19, had an intellectual disability and was subject to a community treatment order under the Mental Health Act.

The case worker was very concerned that Clare's fiancé was subjecting her to serious family violence. The fiancé had also stopped her from accessing medication for her mental illness, causing a deterioration in her mental health and wellbeing and resulting in an admission to a mental health unit.

While secure crisis accommodation had been offered by family violence services, Clare refused to be separated from her fiancé. Her treating mental health professional was concerned that, due to her disability, she was not able to weigh up the risks of continuing to reside with him and was unable to make an informed decision regarding the offer of alternative accommodation.

Victoria Police were involved but, for various reasons, including Clare withdrawing statements made against her fiancé and him alleging that she also engaged in family violence, an application for an intervention order did not proceed.

Clare was subject to an administration order for the management of her finances and had informed her administrator that

her fiancé was her landlord, and her money for rent was deposited into his account. However, this money was not forwarded to the real estate agency, leading to Clare being issued with a notice to vacate for rent arrears.

After speaking with OPA, the case worker applied to VCAT for the urgent appointment of a guardian and VCAT referred the matter to OPA for an investigation about whether an urgent guardianship order was needed.

After receiving the investigation report, VCAT made an order that the Public Advocate be appointed guardian for Clare with power to make decisions about where she lived, her NDIS services and medical treatment. The Public Advocate was also given power to commence or defend a legal action in the event that an application for a Family Violence Intervention Order was necessary.

Since the hearing, Clare has been admitted to hospital and the guardian will liaise with her treating team around discharge planning.



Stock image. Source: Rawpixel

# Communications and media

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 Unit is centrally involved in helping the Public Advocate fulfil these duties.

## OPA online

OPA's website provides a comprehensive repository of all OPA publications and relevant information for the community. As in previous years, most visits to OPA's public website related to either powers of attorney or medical treatment decision-making.

This year also saw a significant increase in visits relating to NDIS service deeds, with 7.6 per cent of all page views (compared to less than one per cent of page views last year).

OPA's website complies with the Web Content Accessibility Guidelines (WCAG 2.1) and provides accessible, user-friendly resources to meet the needs of its stakeholders: people with disability and their families and carers, and the professionals who work with them.

Where possible, content is embedded as plain English text on the website. This enables users to more easily access information from their phone or other mobile device, of which the disability community has very high usage.

Increasingly, online documents are provided in Easy English.

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

During the year, the unit was also represented on the Parliament of Victoria Website Redevelopment Project user panel. The final site is now live.

## Users

This year, the OPA website had 149,972 users, similar to last year (150,848).

Document downloads decreased from 72,058 to 55,108 (a decrease of 27 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.

## OPA updates

This year, OPA issued 10 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 44 per cent, from 796 to 1143 with the percentage of newsletters opened each month growing from 43 per cent in July 2021 to a high of 55 per cent by May 2022. The growing impact and influence of the newsletter could also be seen with publications including PS News and DARU picking up and re-publishing stories from the newsletter.

## Publications

### HealthCARE Conversations video

As foreshadowed in last year's annual report, this year OPA used the considerable and valuable footage captured during filming of a 10-minute video to help health practitioners better communicate with people with disability to create a longer video to be used as a training tool in medical schools.

This resource, based in style in the successful ABC series *You Can't Ask That*, utilises the lived experience of people with a disability in their interactions with healthcare professionals to assist them to optimise their services for this cohort.

It will be finalised early next year and work has commenced with universities offering medical training to incorporate it in their curriculum.

## Online publications

OPA maintains a suite of some 120 publications largely designed to help make the laws with which it works accessible, relatable and current.

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

The number of OPA publications distributed by its distribution partner Victoria Legal Aid was 19,162, a decrease of 13.3 per cent on last year. This was largely due to exhausting stock of *Your Voice*, *Trust Your Choice*, which had been published in conjunction with Senior Rights Victoria under a special grant.

An additional 15,000 copies of the popular powers of attorney brochure, *Take Control of your Future Planning: An Introduction* were printed this year to accommodate requests from hospitals. Approximately half this stock has been exhausted.

In addition, OPA published online a number of audio interviews focusing on disability and human rights, featuring both people with disability and organisations providing advocacy and services for them.

## Internal communications

During the year, 142 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 or partially-remote working, 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 previously shared via informal '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 advocacy

OPA's nuanced work with the media continued this year resulting in its important issues featuring 23 times in the mass media.

This input to the systemic work of the office not only adds to the information on which government makes its decisions but also helps amplify the voice of people with a disability. The Victorian media including regional media is greatly interested in the issues involved and is a critical partner in their resolution by helping to raise awareness.

Issues which featured strongly and contributed to positive outcomes for Victorians with a disability included:

- unregistered supported homes utilising NDIS packages of vulnerable clients
- the closure of the troubled SRS, Hambleton House
- people with disability languishing in prison due to a lack of appropriate accommodation (Quarterly Essay)
- violence in group homes
- the need for more volunteers in critical areas of need and celebration of volunteer community recognition.

Media work is often supported by publicly issued media releases and, this year, 11 were issued and made available on the OPA website, as well as provided to media to promote issues of interest and concern.

# Diversity and inclusion

OPA's Diversity and Inclusion Framework 2019-2022 consists of five plans:

- Disability Action Plan
- Koori Inclusion Action Plan (KIAP)
- LGBTQI Action Plan
- Gender Equality Action Plan
- Cultural Diversity Plan.

The plans are underpinned by a statement, Addressing Intersectional Discrimination, together with affirmative actions designed to drive change and promote an inclusive culture. Through this work, OPA seeks to address the barriers to accessing its services, or contributing to the organisation as staff or volunteers, as a result of disadvantage or discrimination.

OPA is committed to being inclusive and ensuring that everyone it interacts with feels valued, respected and heard. OPA's diversity and inclusion work relies on the dedication and commitment of committees organised and run by staff who drive the actions in the plans.

## Making services more accessible

OPA has a range of translated resources. A fact sheet about the role of the Public Advocate was developed for family members of people with guardians and translated into 17 languages by the Cultural Diversity Planning Committee.

More accessible (and multi-format) publications are available on the OPA website and the use of technology, particularly Zoom and MS Teams, has increased the accessibility of meetings and community education with the use of real-time captioning. Targeted community education sessions were provided for CALD communities by people with a lived experience of disability.

The KIAP committee has maintained relationships with Aboriginal community-controlled organisations including Balit Narrum and the Koori Support Unit at VCAT.

## Employment diversity and inclusion training

All staff have access to SBS inclusion training, featuring modules on culture, gender, age, First Peoples and LGBTIQ+. Disability awareness modules were developed by a staff member with a lived experience, and these are part of the orientation and professional development at OPA. OPA employed people with lived experience of disability in designated roles in the Healthy Discussions Project, including short-term employment of a student with disability.



# Complaints and feedback

Responding to complaints and feedback provides OPA with an opportunity to review and improve its work.

OPA understands that not everyone will agree with the way in which the work is done or the decisions made. Decisions can have a significant impact on a life of a person under guardianship, their family and others involved in their life. Complaints and feedback provide the opportunity to reflect on the significance of the work and the importance of involving family as much as possible in the decision-making process.

Due to COVID-19 lockdown restrictions, 81 per cent of matters were received online (via email or the OPA online complaint form). Only 18 per cent

of matters were received by phone and 1 per cent by post. There were no in-person contacts.

This year, the office handled 178 matters, up from 125 last year. Those outside OPA's jurisdiction numbered 25. Of the remaining matters, there was an increase in the number of formal complaints (up 76 per cent), informal complaints (up 12.5 per cent), enquiries from the Ombudsman (up 18 per cent) and feedback (up 150 per cent) The only area of work that saw a reduction of matters was requests for a review of a guardian's decision (down 25 per cent).

**Table 23.** Complaints and feedback type, 19/20-21/22

Type	19/20	20/21	21/22
Complaints	77	63	111
Informal complaints - managed by program	18	16	18
Enquiries from Ombudsman Victoria	16	11	13
Feedback	1	2	5
Review of a guardian's decision	4	8	6
<b>Total</b>	<b>116</b>	<b>100</b>	<b>153</b>

**Table 24.** Complaints and feedback by program, 21/22

Program	No.
Advocacy and Guardianship	89
Advice and Response	17
Safeguarding, Inclusion and Volunteers	4
Other	1
<b>Total</b>	<b>111</b>

The majority of formal complaints (90 per cent) related to the Advocacy and Guardianship Program with the remaining 10 per cent shared between the other OPA program areas.

OPA's waiting list for the appointment of a guardian or investigator may have contributed to the increase in complaints: complaints regarding a delay in providing a service increased by 225 per cent (from 4 last year to 13 this year).

Other increases included complaints about how OPA dealt with people (up 125 per cent, 13 this year compared to 4 last year) and accommodation issues (a 320 per cent increase from 5 last year

to 21 this year). A number of people also made multiple complaints regarding the same or similar issues.

To enhance how administrative decisions are recorded, Administrative Law and Good Decision-Making workshops were provided for all advocate guardians, investigators, guardianship support officers, investigation support officers and legal officers.

**Table 25.** Formal complaints by issue type, 19/20-21/22

Issue	19/20	20/21	21/22
Access to represented person	11	6	19
Access to services	2	4	5
Accommodation	6	5	21
Advocacy	1	3	-
Bias	2	1	1
Communication/consultation	15	14	15
Delay	5	4	13
Discrimination	2	-	-
Duty of care	3	2	-
Enquiry only	1	-	-
Health/medical issue	3	2	4
Investigation	14	10	11
How OPA treats people	8	8	18
Privacy	3	4	1
Request for information/privacy	1	-	3
<b>Total</b>	<b>77</b>	<b>63</b>	<b>111</b>

Despite the overall increase in formal complaints, the number of matters referred for informal resolution at the program increased by only 12.5 per cent (from 16 last year to 18 this year)

In regard to seeking a review of a guardian's decision, of the 6 requests 2 resulted in complainants being satisfied once they had received a statement of reasons. A further 2 which were reviewed resulted in the guardian's decision being sustained and 2 had not been completed at the time of writing.

All complainants are referred to the Victorian Ombudsman (the Ombudsman), which is an

avenue for complainants who may not be satisfied with the way in which their complaint was responded to. This year, the Ombudsman made enquiries in regard to 13 cases and, in each case, OPA was able to provide information or further explanation. This represents an 18 per cent increase in enquiries from last year.

This year, the Ombudsman's office was instrumental in settling a dispute over a jurisdictional issue (a contract termination), with OPA modifying its practice guideline and providing clarity and closure for the complainant.

# 5. 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 2016*
- *Carers Recognition Act 2012*
- *Disability Act 2006*
- *Residential Tenancies Act 1997*
- *Severe Substance Dependence Treatment Act 2010*
- *National Disability Insurance Scheme Act 2013 (Cth)*.

### 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*
- *Medical Treatment Planning and Decisions Act 2016*
- *Public Records Act 1973*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Public Administration Act 2004*
- *National Disability Insurance Scheme Act 2013 (Cth)*
- *Privacy Act 1988 (Cth)*.

### Disclosure of improper conduct

The purpose of the *Public Interest Disclosures 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.

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

# Appendix B

## Comparative workforce data

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

**Table 26.** Paid employees at 30 June 2022

OPA employees by gender		Age and employment status				
Gender	Total	Age range	Ongoing	Fixed Term	Casual	Total
Man	26	Under 25		1		1
Woman	91	25-34	8	7		15
Self Described	1	35-44	18	7	2	27
		45-54	27	7	1	35
		55-64	26	4	1	31
		Over 64	9			9
<b>Total</b>	<b>118</b>		<b>88</b>	<b>26</b>	<b>4</b>	<b>118</b>

**Table 27.** Paid staff as at June 2022

OPA employees by VPS level and gender					Full Time Equivalent Employees			
Classification	Man	Woman	Self Described	Total	Man	Self Described	Woman	Total
VPS 2		11		11			9.3	9.3
VPS 3	4	12		16	3.41		8.9	12.31
VPS 4	2	10	1	13	2	0.6	9.3	11.9
VPS 5	16	52		68	15.43		45.39	60.82
VPS 6	4	5		9	4		5	9
Executives		1		1			1	1
<b>Total</b>	<b>26</b>	<b>91</b>	<b>1</b>	<b>118</b>	<b>24.84</b>	<b>0.6</b>	<b>79.49</b>	<b>104.93</b>

# Appendix C

## External committees and advisory groups

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

- Australian Guardianship and Administration Council
- Balit Narrum
- COVID-19 Disability Taskforce
- Deakin University Listening to People Rarely Heard Project Advisory Committee
- Disability Act Review Advisory Group
- Disability Advocacy Resource Unit Improving Decision Support Referrals Working Group
- Disability Stakeholder Advisory Group Supporting Justice Advisory Committee
- Eastern Community Legal Centre, Elder Abuse Strategic Advisory Group
- Elder Abuse and Safeguarding Advisory Group
- Elder Abuse Roundtable
- Ethnic Communities' Council Elder Abuse Prevention Advisory Group
- Flinders University and NSW Centre for Intellectual Disability Bringing Supported Decision-Making to Behaviour Support Project Advisory Committee
- Funds in Court Human Rights Advisory Committee
- Justice Connect, Safeguarding Now, Preventing Future Abuse Project Steering Committee
- Law Institute of Victoria, Elder Law Committee
- Law Institute of Victoria, Disability Law Committee
- Project Steering Committee for the Integrated Model of Care for Responding to Suspected Elder Abuse
- Queensland University ARC Linkage Grant Project, redeveloping supported decision-making resources for people with dementia
- Review of The Retirement Villages Act Stakeholder Reference Group
- Royal Children's Hospital, Community Advisory Committee
- Seniors Rights Victoria, Advisory Committee
- Senior Victorians Advisory Group
- Social Services Regulation Reform Taskforce
- VALID Justice For All Steering Committee
- Victorian Electoral Access Advisory Group
- Victorian NDIS Community Advisory Council
- Victorian Public Service, Diversity and Inclusion Community of Practice
- Victorian Public Service Enablers Network
- Victoria Police Disability Portfolio Reference Group
- Victoria Police Financial Elder Abuse Trial Advisory Group
- Victoria Police Mental Health Portfolio Reference Group

# Appendix D

## Financial Report for the year ended 30 June 2022

<b>Table 28.</b> Comprehensive operating statement	<b>Note</b>	<b>2022 \$000's</b>	<b>2021 \$000's</b>
<b>Continuing operations</b>			
<b>Income from transactions</b>			
Output appropriations	1	14,959	12,252
Government grants		3,578	3,243
Other income		-	62
<b>Total income from transactions</b>		<b>18,537</b>	<b>15,556</b>
<b>Expenses from transactions</b>			
Employee expenses	2	16,222	13,220
Depreciation and amortisation		82	83
Interest expense		8	9
Supplies and services	3	2,324	2,043
<b>Total expenses from transactions</b>		<b>18,635</b>	<b>15,356</b>
<b>Net result from transactions (net operating balance)</b>		<b>(98)</b>	<b>201</b>
<b>Other economic flows included in net result</b>			
Other gain/(loss) from other economic flows		2	1
<b>Total other economic flows included in net result</b>		<b>2</b>	<b>1</b>
<b>Net result</b>		<b>(96)</b>	<b>202</b>
<b>Comprehensive result</b>		<b>(96)</b>	<b>202</b>

**Note 1:** The increase in output appropriation is due to a Treasurer's Advance of \$2.3million to cover the termination payments.

**Note 2:** The increase in employee expenses is mainly due to the recognition of termination payments. Termination benefits are payable when employment is terminated before normal retirement date, or when an employee accepts an offer of benefits in exchange for the termination of employment. Termination benefits are recognised when the Office of the Public Advocate is demonstrably committed to terminating the employment of current employees according to a detailed formal plan without possibility of withdrawal or providing termination benefits as a result of an offer made to encourage voluntary redundancy.

**Note 3:** The increase in operating expenses is due to an increase in the lease cost of the office building due to indexation, and a review of the Advocate Guardianship Program.

## 6. Police awards

### The Public Advocate this year recognised police who provided exceptional service to people with disability.

Inspector Chris Allen, who spearheaded a project to help people with disability during the pandemic, was awarded the 2021 Public Advocate's Ben Bodna Award for exceptional leadership in support of Victorians with a disability. Inspector Allen assembled a team of officers to regularly check in with people with disability across the Hume, Moreland and Moonee Valley areas, to listen to and address their safety concerns.

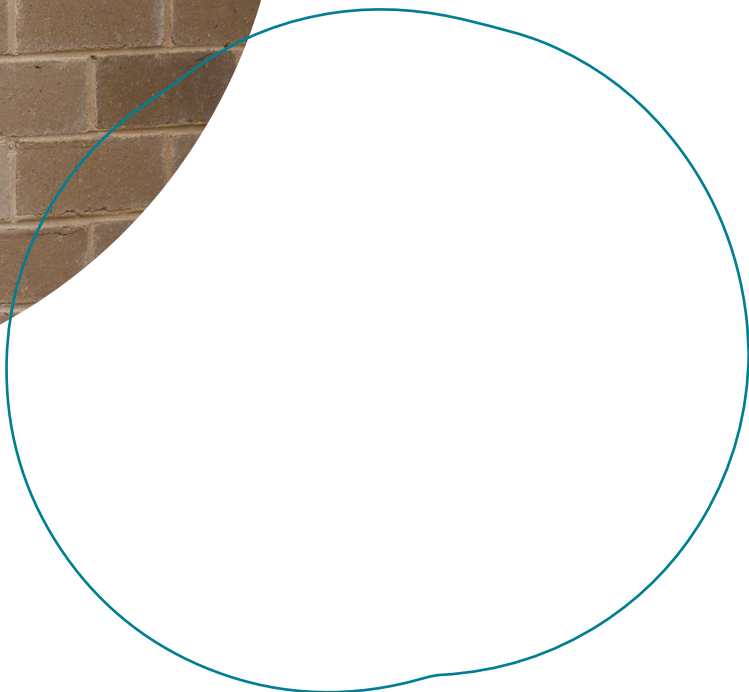
The police-nominated award went to acting Senior Sergeant Kelly Christie from the Dandenong Prosecutions Unit for championing disability awareness in the workplace, ensuring reasonable adjustments were made for a vision-impaired colleague and organising an internship for and mentoring a student with disability,

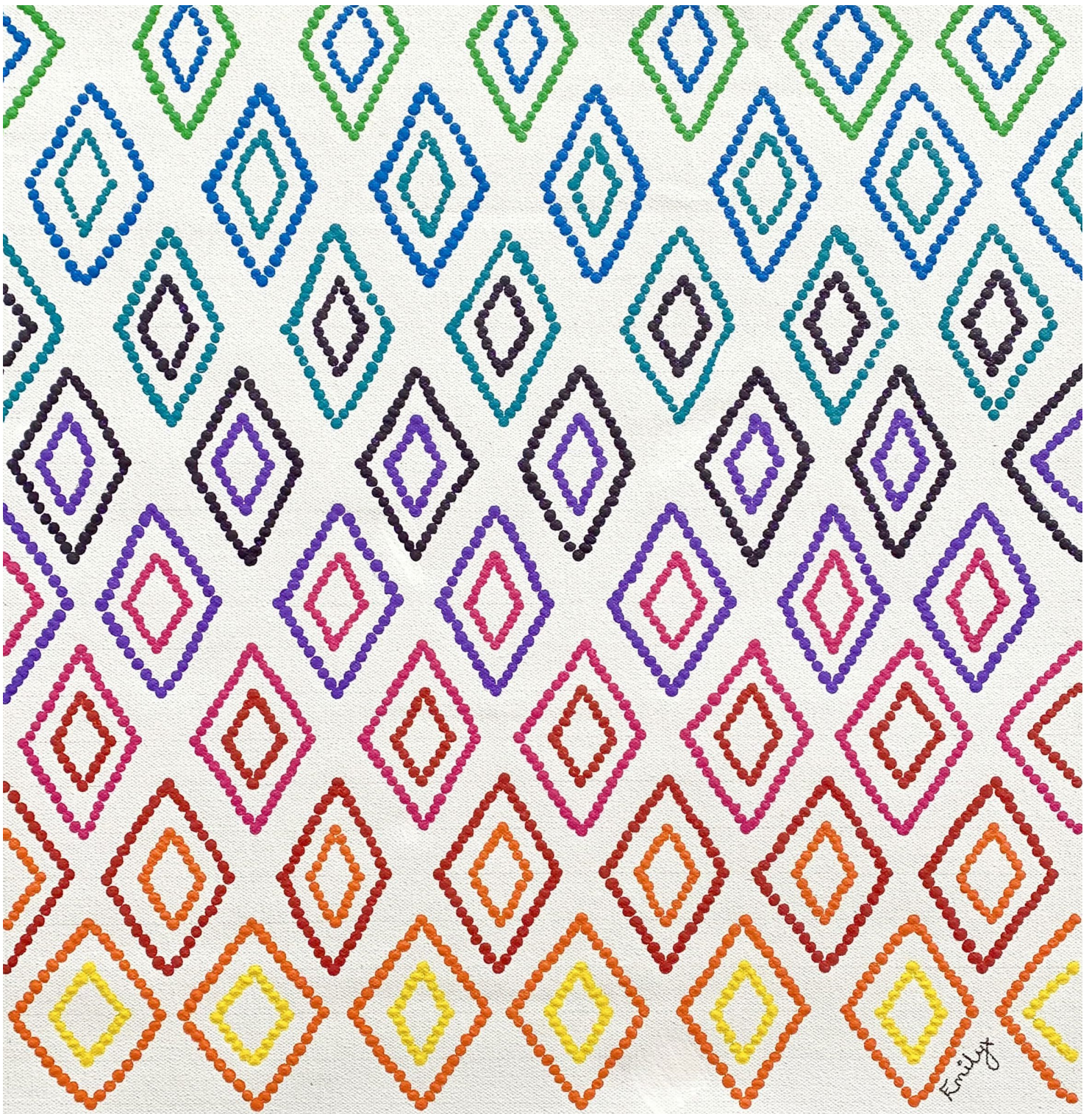
The ITP-nominated awards went to Melton and Horsham Police Stations for their use of the Independent Third Persons program to support people with disability through the police interview process.

In lieu of an in-person ceremony usually held on the International Day of People with Disability (3 December), the awards were presented online by the Public Advocate, on 17 March 2022.



*Pictured: Inspector Chris Allen*





Office of the Public Advocate

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