



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

Public hearing 26: Homelessness, including experience in boarding houses, hostels and other arrangements

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December 2022

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

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## **Acknowledgement of Country**

This submission 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.

## Abbreviations

CISO	Corrections Independent Support Officer
ITP	Independent Third Person
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
SRS	Supported residential service(s)
VCAT	Victorian Civil and Administrative Tribunal

# Recommendations

## **Recommendation 1**

The Victorian Government should consolidate the Supporting Accommodation for Vulnerable Victorians Initiative and Pension Level Project funding into one funding program that applies to every pension-level SRS.

## **Recommendation 2**

The Victorian Government should require all proprietors to complete an annual compliance report on the status of their staff to meet the 90 per cent mandatory attendance at mental health training.

## **Recommendation 3**

The Victorian Government should fund staff training in Supported Residential Services to manage the de-escalation of violence and delivery of Mental Health First Aid and delivery of Mental Health First Aid.

## **Recommendation 4**

The Victorian Government should ensure mental health facilities use key performance indicators to monitor the usage and effectiveness of the mental health referral form for discharge and follow-up of patients to Supported Residential Services.

## **Recommendation 5**

The Victorian Government should ensure that all workers entering Supported Residential Services display visible identification including the organisation's name.

## **Recommendation 6**

The NDIA should set up an active outreach program targeted at congregate-care providers (for example Supported Residential Services in Victoria) to ensure residents are getting independent advocacy supports, supported-decision making services and opportunities to explore independent housing options to address the largely closed institutional nature of these 'last resort' facilities. (p 26)

## **Recommendation 7**

The National Disability Insurance Agency and the Victorian Government should establish an interjurisdictional taskforce to look at the Supported Residential Services sector and resolve the human rights issues therein.

## **Recommendation 8**

The Victorian Government should request Homes Victoria assess the suitability and risks of existing Supported Residential Services buildings and report to government over a three-year period as to whether they are fit for purpose.

## **Recommendation 9**

The Australian Government should amend sub-section 10(2) of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Cth) should be amended to include that, when considering whether a member of the applicant's key personnel is suitable to be involved in the provision of supports or services for which the applicant will be registered to provide, the Commissioner has regard to 'whether the member is a fit and proper person' to provide disability services.

**Recommendation 10**

The Victorian Government should require that regulatory reform includes:

- an assessment of Supported Residential Services proprietors against a strengthened 'fit and proper person' criteria
- a requirement that proprietors meet a tougher registration process within two years
- a minimum qualification standard for all personal support staff to meet residents' personal hygiene, medication management, care, and activity requirements
- minimum standards for meaningful activities that facilitate social connections

**Recommendation 11**

The National Disability Insurance Agency should put in place a policy that support coordinators should ordinarily be independent of a participant's accommodation and core support providers.

**Recommendation 12**

State and federal governments should develop comprehensive guidance regarding the regulation of congregate-care providers (for example Supported Residential Services in Victoria) which are also registered National Disability Insurance Scheme providers.

**Recommendation 13**

The Australian Government should amend the National Disability Insurance Scheme Act 2013 (Cth) to include reference to the legislation authorising the Victorian and other Community Visitor Program as a key component of the safeguarding arrangements in respect of National Disability Insurance Scheme-funded services. Amendments should state that:

- Community Visitors are entitled to see copies of a participant's National Disability Insurance Scheme plan, any documentation related to the participant's SDA tenancy arrangements, as well as the documents they are currently entitled to see when visiting (as specified in the Victorian Disability Act).
- Community Visitors and other comparable entities which are appointed under state and territory legislation are entitled to share information to the extent necessary to advocate for participants and raise concerns with relevant complaints bodies. (p 26)

**Recommendation 14**

The Victorian Government should ensure that Community Visitors have the power to take photos to support the documentation of issues, amending legislation, if necessary

**Recommendation 15**

The Victorian Government should provide additional funding to ensure that the Community Visitors Program has the technology and resources required to effectively fulfil its important safeguarding role.

# 1. About the Office of the Public Advocate

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

The Public Advocate has seven functions under the Guardianship and Administration Act 2019 (Vic), all of which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect, and exploitation. To this end, OPA provides a range of critical services for people with cognitive impairment or mental illness, including guardianship, advocacy, and investigation services. In 2021-22, OPA was involved in 1976 guardianship matters (972 which were new), 457 investigations, and 297 cases requiring advocacy.<sup>1</sup> In recent years, the profile of its clients has begun to change. As in previous years, the complexity of cases remains a key feature of guardianship matters, each of which has multiple dimensions ranging from complex disability presentations and service provision arrangements to complex family dynamics. A key contributor to this increasing complexity is the introduction of the National Disability Insurance Scheme (NDIS), and the interface with the justice system, in addition to the lack of appropriate and accessible housing for people with complex and challenging support needs.

Another key function of the Public Advocate is to promote and facilitate public awareness and understanding about the Guardianship and Administration Act 2019 and any other legislation affecting persons with disability or persons who may not have decision-making capacity. To do so, OPA supports a full-service communications function with 120 publications in print or PDF, a website attracting approximately 150,000 visitors in the last year and strong media relations. It also operates an Advice Service which provided 10,133 instances of advice last financial year.<sup>2</sup> OPA also coordinates a community education program for professional and community audiences across Victoria to engage on a range of topics such as the role of OPA, guardianship and administration, and enduring powers of attorney.

OPA is supported by approximately than 600 volunteers across three volunteer programs: the Community Visitors Program, the Independent Third Person (ITP) Program and the Corrections Independent Support Officer (CISO) Program. The ITP Program is an on-call, state-wide service operating in all police stations in Victoria. ITPs assist persons with cognitive impairment when making formal statements to Victoria Police. In 2021-22, ITPs attended a total of 3969 interviews. CISOs are experienced ITPs who support prisoners who have an intellectual disability at Governor's disciplinary hearings at Victorian prisons and/or remand centres. In 2021-22, CISOs attended 49 hearings at four Victorian prisons.<sup>3</sup>

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability or mental illness. They monitor and report on the adequacy of services provided in the interests of residents and patients. They ensure that the human rights of residents or patients are being upheld and that they are not subject to abuse, neglect, or exploitation. In their annual report, Community Visitors relate their observations on the quality and safety of the services they visit and make recommendations to the Victorian State Government. Approximately 400 Community Visitors visit across three streams: disability services, supported residential services (SRS) and mental health

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<sup>1</sup> Office of the Public Advocate, *Annual report (2022)* 9.

<sup>2</sup> *Ibid*, 10.

<sup>3</sup> *Id.*

services. In 2021-22, Community Visitors made 3411 statutory visits, including to sites of criminal and civil detention.<sup>4</sup>

OPA's experience in relation to Victorian SRS is largely drawn from the work of the Guardianship Program and SRS stream of the Community Visitor Program.

## 1.1. Guardianship

The Public Advocate is the guardian of last resort under the Guardianship and Administration Act. Under this Act, the Victorian Civil & Administrative Tribunal (VCAT) may appoint the Public Advocate as guardian to make decisions for a person who is unable to make the decision by reason of a disability, where there is no one else suitable and willing to be guardian. The Public Advocate has the power to delegates the powers under these orders to OPA Advocate Guardians.

Advocate Guardians may be guardian for a person currently residing in an SRS, or the Public Advocate may have been appointed to make an accommodation decision for a represented person and in this context, sometimes place people in SRS. Advocate Guardians report that generally, the decision to place people in SRS is a last resort decision to avoid homelessness – contrary to the NDIS policy objectives of choice and control.

## 1.2. Community Visitor Program, SRS stream

The Public Advocate is also Chair of the Community (Residential Services) Visitors Board.

Community visitors who are appointed under the *Supported Residential Services (Private Proprietors) Act 2010 (Vic)* (SRS Act) are empowered to enter and look at any part of the SRS premises, speak with residents, question staff and examine selected documentation to query: whether services are being delivered to residents in accordance with the principles of the SRS Act and the accommodation and personal support standards prescribed under that Act; the status of any complaint made by or on behalf of a resident and the progress of its resolution; and any other issue or concern raised with the community visitor by or on behalf of a resident.<sup>5</sup>

## 2. OPA's engagement with this Royal Commission

OPA is pleased to make a submission to the Royal Commission on Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) in response to Public hearing 26: homelessness, including experience in boarding houses, hostels and other arrangements. The Public Advocate was grateful for the opportunity to give evidence at this hearing, focusing in particular on the experiences of people with disability in Victorian supported residential services (SRS). OPA has a long history of advocacy on behalf of SRS residents and commends the Royal Commission for its particular focus on residents in these inherently risky settings.

In addition to her evidence at Public hearing 26 on the topic of homeless, the Public Advocate has also given evidence to the Royal Commission at the following hearings:

- Public hearing 30: guardianship, substituted and supported decision-making in November 2022;
- with two Community Visitors and an OPA Community Visitor Coordinator at Public hearing 13 on preventing and responding to violence, abuse, neglect and exploitation in disability services (a Case Study); and

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<sup>4</sup> Office of the Public Advocate, *Community Visitors Annual Report 2020-2021* (2021) 10.

<sup>5</sup> *Supported Residential Services (Private Proprietors) Act 2010 (Vic)* Part 9 – Community visitors

- Public hearing 3 in December 2019 in Melbourne to speak about violence in group homes.

In November 2019, OPA released a report, *I'm too scared to come out of my room, Preventing and responding to violence and abuse between co-residents in group homes* that was tendered to the Royal Commission in response to the Group Homes Issues Paper.

OPA has contributed additional submissions on the following topics:

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

### 3. Human rights approach

This submission applies a human rights approach that:

- holds that all people with disability have the right to enjoy equality of opportunity and to effectively participate in, and be fully included in, society
- recognises that most challenges experienced by people with disability are a result of disabling systems and environments, rather than being due to an inherent 'lack' in the individual
- considers impairment as an expected dimension of human diversity
- seeks for people with disability to be supported and resourced to have the capabilities to lead a dignifying and flourishing life.

### 4. The SRS model

OPA has long held concerns about residents living in SRS in Victoria. SRS in Victoria have been the subject of sustained media coverage in the last two years after the sector's regulator intervened to close down a number of facilities, including Hambleton House.<sup>6</sup>

OPA's concern regarding the wellbeing, safety and human rights of those living in SRS is longstanding, as the Public Advocate made clear during her appearance before the Royal

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<sup>6</sup> Royce; Topsfield Millar, Jewel, 'How Denise Morgan escaped Albert Park's house of horrors ', The Age (Melbourne, 27 September 2021) <<https://www.theage.com.au/national/victoria/how-denise-morgan-escaped-melbourne-s-house-of-horrors-20210920-p58t25.html>>; Royce; Topsfield Millar, Jewel, 'State seizes control of supported care homes over abuse, 'uninhabitable conditions' ', The Age (Melbourne, 13 January 2022) <<https://www.theage.com.au/national/victoria/state-seizes-control-of-supported-care-homes-over-abuse-uninhabitable-conditions-20220112-p59nlx.html>>; Royce; Topsfield Millar, Jewel, 'Care home closed amid allegations of bullying, abuse and poor food ', <<https://www.theage.com.au/national/victoria/care-home-closed-amid-allegations-of-bullying-abuse-and-poor-food-20220705-p5az4a.html>>.

Commission on 1 September 2022. Concerns first identified by Community Visitors had been escalated by OPA to regulators over a period of years with no discernible outcomes.

The Public Advocate first wrote to the NDIS Quality and Safeguards Commission in 2020 with seven referrals for investigation of potential conflicts of interest by SRS proprietors. However, as highlighted during the Royal Commission hearing, it's not always clear what action is taken in response to these referrals due to limitations in information-sharing arrangements. The Community Visitor Program also made numerous complaints regarding conditions at various SRS across the state to the Human Services Regulator but were subsequently advised that no action would be taken.

No action was taken by the Regulator until subsequent media coverage of a COVID outbreak at Hambleton House, in which observations from the Public Advocate based on Community Visitor reports were quoted. Much community shock and outrage was expressed over the conditions there given how long Community Visitors had been reporting these issues with no action taken. The Community Visitor Residential Services Board and OPA subsequently co-authored a confidential report to State Government following the closure of Hambleton House, about the systemic failures that allowed it to happen, and the broader issues around safeguarding people with disability residing in SRS.

## 4.1. Legislative context

The *Supported Residential Services (Private Proprietors) Act 2010* (Vic) and *Supported Residential Services (Private Proprietors) Regulations 2012* form the legislative context for the operation of SRS in Victoria. The Act and Regulations aim to protect the safety and wellbeing of residents living in SRS. The legislative framework is underpinned by principles which focus on recognising and respecting the rights of residents and supporting residents to live as independently as possible, for example:

- residents of supported residential services have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities;
- proprietors should support residents to live as independently as possible by allowing them the right to choose their service providers; and
- proprietors should provide safe and comfortable surroundings and ensure that support services take account of the needs of individual residents as far as possible.

SRS proprietors must also comply with prescribed 'accommodation and personal support standards' set out in the Regulations. There are 15 standards across four key aspects of a resident's life in an SRS which cover: lifestyle, food and nutrition, health and wellbeing, and physical environment.<sup>7</sup>

## 4.2. Properties

Community Visitors rarely, if ever, report visiting purpose-designed SRS. Rather, SRS are likely to be other types of residences adapted for this context, for example: former aged care facilities (which would have not met the minimum standards for aged care introduced some time ago, and have since been reappropriated for SRS), mansions or large homes that have been repurposed; and demountables used as private rentals. Most SRS would be described as being in poor to fair condition.

Some Community Visitors have reported instances where residents have limited or no access to privacy (although others reported that all residents they visited have their own room). Some rooms appear to have been initially designed as single rooms, which have since been separated into two with a particle board-type wall (which may not reach the ceiling), or by a curtain. In some cases, access to a second room is through the first "room"

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<sup>7</sup> *Supported Residential Services (Private Proprietors) Regulations 2012* (Vic) Schedule 9.

which does not have a side wall, thus affording no privacy to the first occupant. In the case of one regional SRS, all rooms are shared unless the resident pays extra for their own room, and there is no screening of any type between rooms, despite Community Visitors advocating for this.

Residents generally have a lack of choice and control about the environment and day to day activities in the residence – there is no individual focus on each person and their interests. Residents are generally not involved in meetings where decisions such as what is on the menu or what activities are available are made. In general, there is a lack of shared responsibility and leadership. This can be compared with outcomes achieved by Winteringham when former SRS residents were provided with individualised supports, as described by witnesses from Winteringham at the Royal Commission hearing. The focus on stabilising immediate living arrangements with a view towards transitioning to more appropriate long-term living arrangements, led by residents' own aspirations for the future, facilitated far more positive outcomes.<sup>8</sup>

## 5. SRS resident profile

### 5.1. Resident profile

As at the date of the Department of Families, Fairness & Housing's (DFFH's) 2018 SRS Census<sup>9</sup>, there were a total of 3142 residents staying in the responding SRS facilities. The number of residents in SRS at the date of the hearing was similar, at approximately 3100 residents.<sup>10</sup> Seventy percent are pension level and 30% are above pension level. The average (mean) number of residents per facility is 26.6, with a range of 0 to 65. This represents a significant decline from 2103 when there were 156 SRS providing approximately 5400 registered beds.

To maintain occupancy, SRS are taking in people with more complex health needs contributing to a fragmented resident profile. For example, a low care SRS that traditionally provided support for a cohort of frail aged residents is now also supporting people with complex mental health needs, resulting in compatibility issues and greater risk for residents. Forty-seven per cent of residents present with some form of mental illness or psychiatric disability. This is generally a psychotic disorder (53%), a mood disorder (25%) and/or an anxiety disorder (21%). 79% have a disability. A large proportion of residents have some level of health condition and support needs – only 26% of residents have no health conditions or support needs.

Overall, the most common referral source is the resident themselves/family/friends (34%). Referrals from hospitals (18%), mental health services (16%) and community services (9%) are also common. The 2018 census demonstrated that hospitals (64%), mental health services (52%) and self/family/friend (39%) are the most common referral pathways to SRS, followed by Community Services (33%) and homelessness / crisis organisations. Mental health services are the most common source of referral for assisted pension level (SAVVI) residents (28%) – this proportion is significantly higher than all other facility types.

Community Visitors report that while the profile of health and wellbeing needs of residents is broadly consistent with that reported in the 2018 DFFH SRS resident census, the resident profile has changed in other ways as a result of broader reforms in social welfare. These changes include the full scheme rollout of the NDIS, the increased accessibility of aged care home care packages, the emergence of so-called "pop-up housing" (private accommodation) associated with the NDIS, and referrals from other social services, potentially including family violence services. Roughly 30% of all SRS residents are participants in the NDIS, roughly equivalent to 930 SRS residents<sup>11</sup>. Community Visitors

<sup>8</sup> Disability Royal Commission, Transcript, Day 4, Public hearing 26.

<sup>9</sup> Insync, 'Supported Residential Services Census' (2018).

<sup>10</sup> Disability Royal Commission Transcript, Day 5, Public hearing 26, ('Disability Royal Commission').

<sup>11</sup> Disability Royal Commission, Transcript, Day 2, Public hearing 26, pp. 386.

have observed improved outcomes for some residents who are NDIS participants. For example, some residents are now able to access psychologists and occupational therapists on a regular basis, others have the benefit of a support worker to assist with tasks such as shopping. Some residents are taken to medical appointments rather than having to wait for a doctor to visit, some younger residents go to the football, parks, sightseeing with younger workers, and in the main people have more variety and activity in their lives outside the facility. However, the NDIS has also brought with it significant variance in the training and certification of workers, workers who fail to appropriately identify themselves, and the risk that the individualised nature of the supports provided may separate a resident from others in the facility, thereby isolating them.

The diversity of people residing in SRS is illustrative of the broader lack of accommodation and the consequent pressures on adjacent services. For example, OPA understands that at least one state-funded family violence service in Victoria was considering referring family violence victim survivors to two SRS in its local area in the absence of other accommodation options. This has raised questions about the suitability of these properties for victim survivors of family violence, who are likely to be at ongoing risk from perpetrators, with few protections likely to be available in the SRS setting.

## **5.2. Implications of the resident profile**

This profile shows that there is a high level of support needs within the population of people living in SRS. OPA holds concerns about whether the individual support needs of residents with this level of complexity can be adequately addressed in facilities with the low staffing levels characteristic of SRS (with a minimum staffing ratio of 1:30). This raises serious questions about the financial viability of SRS over the long-term.

The high level of support needs in the population of SRS residents is also evidence of broader failure by the Victorian government to provide suitable short and long-term accommodation options for people in mental health facilities, people in acute hospital settings, and people with disability. SRS remains the last-resort option for people being discharged from acute settings because of the dearth of step-down facilities for people experiencing health or mental health crises.

In order to ensure that SRS are able to better meet the needs of all residents, particularly residents with a psychosocial disability, OPA repeats the following recommendations made in the OPA Community Visitor 2021-22 annual report (at page 59):<sup>12</sup>

### **Recommendation 1**

The Victorian Government should consolidate the Supporting Accommodation for Vulnerable Victorians Initiative and Pension Level Project funding into one funding program that applies to every pension-level SRS.

### **Recommendation 2**

The Victorian Government should require all proprietors to complete an annual compliance report on the status of their staff to meet the 90 per cent mandatory attendance at mental health training.

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The Victorian Government should fund staff training in Supported Residential Services to manage the de-escalation of violence and delivery of Mental Health First Aid and delivery of Mental Health First Aid.

### **Recommendation 4**

The Victorian Government should ensure mental health facilities use key performance indicators to monitor the usage and effectiveness of the mental health referral form for discharge and follow-up of patients to Supported Residential Services.

## Recommendation 5

The Victorian Government should ensure that all workers entering Supported Residential Services display visible identification including the organisation's name.

## 6. Appropriateness of SRS for people with disability

OPA considers that SRS are not settings in which it will usually be possible for residents to achieve a full and flourishing life characterised by choice and control, or social inclusion, even with the additional funds provided to eligible residents under the NDIS. Their institutional nature precludes such positive outcomes.

As was made evident in the public hearings focusing on Victoria, the regulatory system has been inadequate for the purposes of preventing the neglect and exploitation of residents. The conditions reported by witnesses including Denise<sup>13</sup>, Jacob<sup>14</sup>, and Bel<sup>15</sup>, are consistent with those which have been reported by Community Visitors, the Residential Services Board, and the Public Advocate to regulators and government over many years. Despite their sustained efforts, the wellbeing and safety of SRS residents in Victoria continues to be a major concern for OPA. Conditions in some SRS are arguably inconsistent with a number of Convention on the Rights of Persons with Disabilities (CRPD) rights, including rights to: freedom from exploitation, violence and abuse; live independently and being included in the community; respect for privacy and adequate standards of living and social protection.<sup>16</sup>

At best, adequate regulation of the sector will prevent overtly exploitative practices from occurring in SRS. However, the broader objectives of choice and control envisioned by the NDIS are at odds with the institutionalised nature of SRS and the ways in which people come to be residents of them. Based on a recent study of the experiences of people with psychosocial disability in Victoria, Dearn argues that one of the unintended consequences of the deinstitutionalisation movement in Australia was the trans-institutionalisation of former residents – the phenomenon whereby individuals with psychosocial and other disabilities were re-accommodated in new forms of institutional settings such as prisons, homeless shelters, group homes, nursing facilities, and so on.<sup>17</sup> SRS represents one of these new forms of institutions, because residents' capacity for agency to originate and make choices is limited by the environment in which they live and the relationships in their lives. On this basis, significant structural change would be required for SRS residents to experience transformation under the NDIS model of choice and control.<sup>18</sup>

OPA urges the Commission in its inquiry to focus on recommendations to create systems that prioritise accessible, affordable and individualised housing and support solutions. In the meantime, whilst SRS exist as a last resort in an imperfect system, additional oversight and effective regulation to prevent exposure to violence, exploitation and neglect is essential.

## Recommendation 6

The NDIA should set up an active outreach program targeted at congregate-care providers (for example Supported Residential Services in Victoria) to ensure residents are getting independent advocacy supports, supported-decision making services and opportunities to

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<sup>13</sup> Disability Royal Commission Transcript, Day 4, Public hearing 26.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) arts 16, 19, 22 & 28.

<sup>17</sup> Dearn, E., Ramcharan, P., Weller, P., Brophy, L., & Johnson, K. (2022). Supported residential services as a type of "total institution": Implications for the National Disability Insurance Scheme (NDIS). *Australian Journal of Social Issues*, 1-17.

<sup>18</sup> Ibid.

explore independent housing options to address the largely closed institutional nature of these 'last resort' facilities.

#### **Recommendation 7**

The National Disability Insurance Agency and the Victorian Government should establish an interjurisdictional taskforce to look at the Supported Residential Services sector and resolve the human rights issues therein.

#### **Recommendation 8**

The Victorian Government should request Homes Victoria assess the suitability and risks of existing Supported Residential Services buildings and report to government over a three-year period as to whether they are fit for purpose.

## **7. Issues**

### **7.1 Regulatory gaps**

In OPA's experience, examples such as Hambleton House are not just the "bad apples" of an otherwise functioning system, but evidence of broader systemic failure – it is the nature of private business which facilitates these poor practices. The viability of the SRS model has been extended with the introduction of the NDIS and monetised by SRS proprietors, with detrimental consequences for residents, and in the absence of a robust and comprehensive regulatory system, SRS residents will continue to fall through the cracks.

Significant gaps are emerging at the interface between the regulation of SRS and the regulation of NDIS funded providers. As was made clear at Hearing 26, the regulatory interface between the NDIS and SRS in Victoria is complex and patchy, with an increasing number of actors with a role to play in the safeguarding of SRS residents but no clear division of responsibility between SRS and NDIS regulators. It remains unclear who has responsibility for residents at the interface between the SRS and NDIS sectors when serious issues arise.

Some properties sit outside the regulatory framework entirely. The term "pop up" accommodation has been used by The Age (2021), the OPA (2021), and more recently the Disability Royal Commission (2022) in reference to the emergence of private rental accommodation for people with disability outside the regulatory framework of the SRS Act or the Residential Tenancies Act.

Community Visitors have recently raised concerns about the increase in the number of properties at which NDIA funded services are provided which fall outside the scope of existing protections for residents of supported accommodation including Community Visitors – for example, OPA has been made aware of two new properties which house 13 and eight residents respectively, very loose definition of bedrooms (for example, garages being used as bedrooms), no communal areas, one shared bathroom per property, meals and some supports provided. These properties currently fall outside the scope of Community Visitors' powers as they are not SRS or other types of homes that would be visited by Community Visitors – these are private rentals where the applicability of standard tenancy rights is unclear and there appears to be no effective complaints mechanism.

Unlike some other Australian jurisdictions, there is no agency with responsibility for safeguarding at-risk adults who fall between the cracks in Victoria. OPA recently released a report on this topic this month titled *Line of sight: Refocussing Victoria's adult safeguarding laws and practices*.<sup>19</sup> It makes seven recommendations to improve adult safeguarding arrangements for at-risk adults. The cornerstone recommendation of the report is the establishment of an adult safeguarding function for a new or existing agency. The establishment of an adult safeguarding function for a new or existing Victoria agency could

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<sup>19</sup> Office of the Public Advocate, *Line of sight: Refocussing Victoria's adult safeguarding laws and practices* (2022)

potentially address this issue.

### **Recommendation 9**

The Australian Government should amend sub-section 10(2) of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules (Cth) to include that, when considering whether a member of the applicant's key personnel is suitable to be involved in the provision of supports or services for which the applicant will be registered to provide, the Commissioner has regard to whether the applicant is a 'fit and proper' person to provide disability services.

### **Recommendation 10**

The Victorian Government should require that regulatory reform includes:

- an assessment of Supported Residential Services proprietors against a strengthened 'fit and proper person' criteria
- a requirement that proprietors meet a tougher registration process within two years
- a minimum qualification standard for all personal support staff to meet residents' personal hygiene, medication management, care, and activity requirements
- minimum standards for meaningful activities that facilitate social connections.

## **7.2 Financial exploitation of residents of SRS**

The lack of transparency, accountability, and oversight in the context of SRS/NDIS service provision has allowed the emergence of financially exploitative arrangements between residents and proprietors of SRS. Examples of these identified by Community Visitors include:

- the **commodification** of vulnerable people. The Age in its recent article *State seizes control of supported care homes over abuse, 'uninhabitable conditions'* described an investigation by the Victorian Government which revealed "coercion and abuse of residents, uninhabitable living conditions, forgery of signatures and access to NDIS services being hindered."<sup>20</sup>
- residents being subjected to **undue influence** (or the '**capture**' of residents), for example:
  - residents being coerced into staying at SRS when they have been looking for alternative accommodation;
  - refusing entry to or threatening to evict residents who would not sign up to the SRS proprietors' NDIS business;
  - denying access to NDIS support workers of their choice if they were not employed by the owner's business; and
  - residents signing documents for accommodation and services without understanding what they were agreeing to.
- **conflicts of interest**: OPA is aware that there are increasing numbers of SRS proprietors setting up NDIS businesses. In some of these businesses there is a lack of transparency and accountability about the use of NDIS funds:
  - there is the potential for double dipping by using a person's plan funding to pay for services that the participant has already paid for as part of their SRS room

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<sup>20</sup> Royce; Topsfield Millar, Jewel, 'State seizes control of supported care homes over abuse, 'uninhabitable conditions'', The Age (Melbourne, 13 January 2022) <<https://www.theage.com.au/national/victoria/state-seizes-control-of-supported-care-homes-over-abuse-uninhabitable-conditions-20220112-p59nlx.html>>;

and board by a support worker simultaneously being employed in the SRS serving all the residents;

- there is a lack of transparency around the use of NDIS funds as some residents have claimed that their NDIS funds have 'disappeared';
- services previously provided as part of a resident's SRS agreement, such as showering assistance, are now only available to those who can pay separately under their NDIS plan, while SRS residents without plans now only receive 'shower reminders' with no reduction in SRS fees;
- charging for NDIS services such as psychological support, that are not provided; and
- charging residents with an NDIS plan separately for services they already pay for in their SRS fees such as cleaning and laundry.

#### **Recommendation 11**

The National Disability Insurance Agency should put in place a policy that support coordinators should ordinarily be independent of a participant's accommodation and core support providers.

#### **Recommendation 12**

The Australian Government, with State and Territory Governments should develop comprehensive guidance regarding the regulation of congregate-care providers (for example Supported Residential Services in Victoria) which are also registered National Disability Insurance Scheme providers.

### **7.3 Abuse, neglect and violence**

OPA has long held concerns about the endemic levels of violence in SRS. In the 2020-21 report, Community Visitors reported 143 new issues of violence, abuse and neglect, noting that in some SRS, 'verbal and physical aggression had become more normalised during the pandemic, with some assaults not accurately reflected in the incident reports or shared with community visitors, despite police attendance at the SRS.'<sup>21</sup>

### **7.4 Role of community visitors**

There is currently no reference to Community Visitors as part of the broader NDIS safeguarding framework. As found by the Productivity Commission, Community Visitors play a critical safeguarding role promoting and upholding the rights of people with disability.

OPA recommends that the Australian Government amend the NDIS Act to include reference to the legislation authorising the Victorian and other Community Visitor Programs as a key component of the safeguarding arrangements in respect of NDIS-funded services.

The amendments should state that Community Visitors are entitled to see copies of a participant's NDIS plan, any documentation related to the participant's SDA tenancy arrangements, as well as the documents they are currently entitled to see when visiting (as specified in the Victorian legislation).

#### **Recommendation 13**

The Australian Government should amend the National Disability Insurance Scheme Act 2013 (Cth) to include reference to the legislation authorising the Victorian and other Community Visitor Program as a key component of the safeguarding arrangements in respect of National Disability Insurance Scheme-funded services. Amendments should state that:

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<sup>21</sup> Office of the Public Advocate, *Community Visitor Annual Report 2020-21* (2021) 62.

- Community Visitors are entitled to see copies of a participant's National Disability Insurance Scheme plan, any documentation related to the participant's SDA tenancy arrangements, as well as the documents they are currently entitled to see when visiting (as specified in the Victorian Disability Act).
- Community Visitors and other comparable entities which are appointed under state and territory legislation are entitled to share information to the extent necessary to advocate for participants and raise concerns with relevant complaints bodies.

**Recommendation 14**

The Victorian Government should ensure that Community Visitors have the power to take photos to support the documentation of issues, amending legislation, if necessary

**Recommendation 15**

The Victorian Government should provide additional funding to ensure that the Community Visitors Program has the technology and resources required to effectively fulfil its important safeguarding role.

## **7.5 Information sharing**

Information sharing with the NDIA has been a longstanding issue for OPA – particularly in relation to complaints where it is often difficult to understand the outcome in response to a particular incident. This impedes the ability of Community Visitors to follow up on issues effectively. Community Visitors and other comparable entities appointed under state and territory legislation should be entitled to share information to the extent necessary to advocate for participants and raise concerns with relevant complaints bodies. See recommendation 13.