



6 April 2023

OPA Position Statement – Right to tell one’s own story

Some people with experience of guardianship or administration want the opportunity to share their own stories publicly, without undue constraints. The Office of the Public Advocate (OPA) supports their calls and commends the disability advocacy organisations who have sought to advance this goal.

There is currently a provision in Victorian legislation that prevents anyone publishing or broadcasting information that could identify parties involved in guardianship and administration proceedings without the permission of the Victorian Civil and Administrative Tribunal (VCAT). The provision is found in Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (clause 37). In effect, this provision prevents people under guardianship or administration orders from speaking freely about their experiences at VCAT or of their experiences with their appointed guardian or administrator.

The intention of the provision is to respect the person’s right to privacy, protected by section 13 of the Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Victorian Charter). However, the Victorian Charter also protects a person’s freedom of expression. Whilst this right may be subject to lawful restrictions, any restriction must be demonstrably justified, taking into account matters such as the nature of the right, the nature and extent of the limitation, and any less restrictive means available to achieve the purpose that the limitation seeks to achieve, among other things.

The United Nations *Convention on the Rights of Persons with Disabilities* has heralded a shift from a ‘best-interests’ approach to decision-making for people with disability, to a human rights-based approach. It acknowledges people with disability as holding the same rights as everyone else: including the right to autonomy. In light of the Convention, OPA considers that greater weight should be placed on the person’s right to freedom of expression, and as a result, the current legislative restriction on a person’s freedom to speak about their own experiences without VCAT’s prior consent is no longer demonstrably justified or proportionate.

OPA recognises that there are valid reasons to limit the disclosure of sensitive and personal information discussed in guardianship and administration proceedings, to protect the privacy of people under these orders. These protections should only apply to other parties’ use of information shared in guardianship or administration hearings and ensure the person’s right to tell their own story is not inadvertently limited.

OPA calls for the Victorian Government to amend the legislative provision that effectively gags people with experience as represented persons or proposed represented persons under a guardianship or administration order. Ensuring people can freely tell their own stories will increase transparency and promote public trust in this essential safeguarding system.