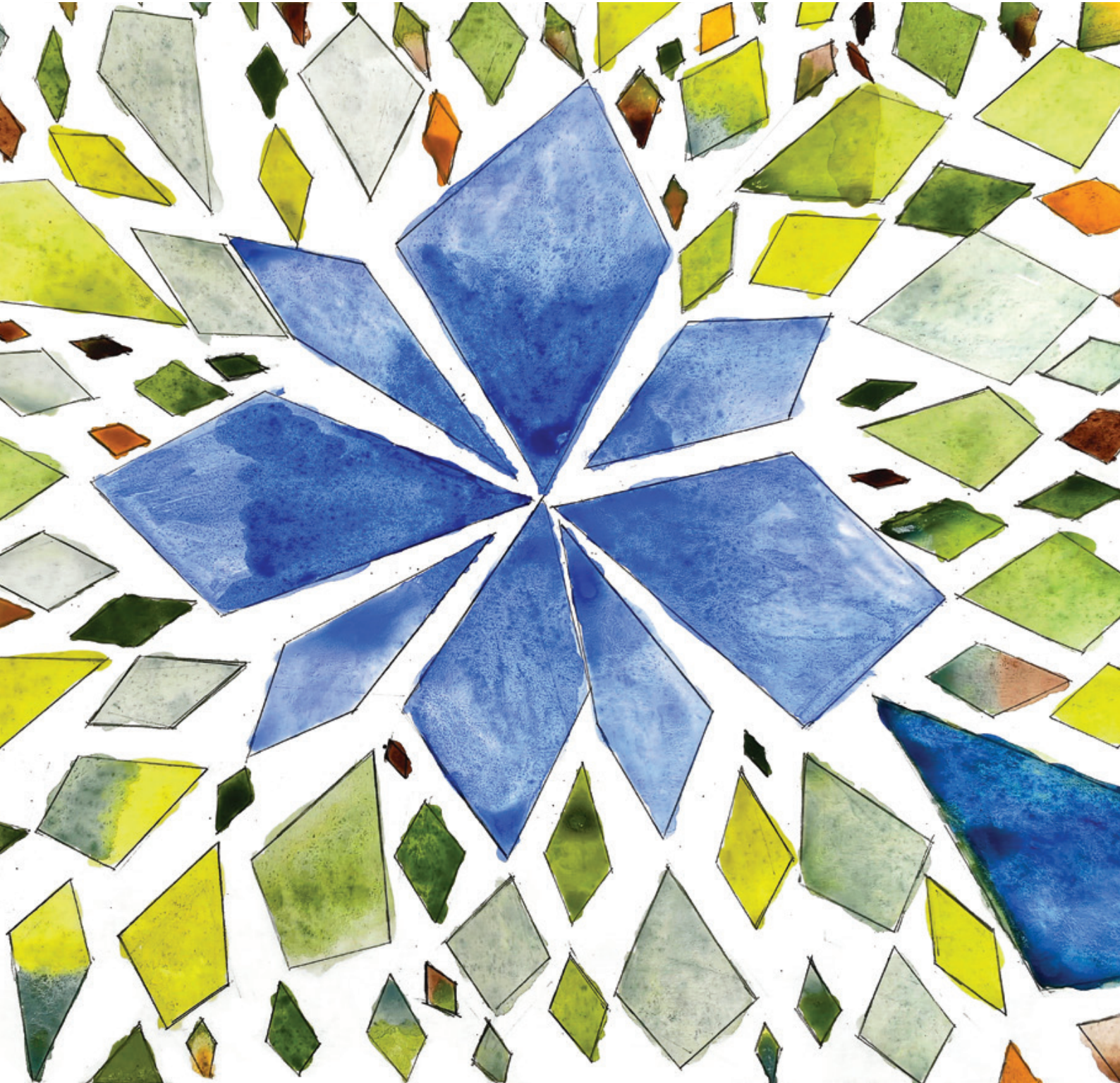


Office of the Public Advocate

2023 Annual Report

Safeguarding the rights and interests of people with disability



Helen Butcher. Shattered Bloom

About the cover image
Shattered Bloom
Helen Butcher
Watercolour on paper



About the Artist

In mid 2017 Helen (then in her late 20's) began to revisit her love of art. She joined the ArtGusto studio and is now a valued member and work friend. Through her exploration of florals and patterns, over the past six years, Helen's own unique style has emerged. With the use of pattern, she is able to explore colour and design. Her love of florals is still there but has taken on its own unique expression that Helen wasn't expecting, but is really enjoying. When Helen began working at the ArtGusto studio she didn't want to exhibit her work through fear of criticism. Since then, Helen has exhibited her work in over 25 Group shows and seven competitions. Her work has been used for publications and she has sold quite a number of artworks. Helen had her first and very successful, solo show in 2021.

ArtGusto

The Office of the Public Advocate purchased this artwork from ArtGusto, a supportive art studio for local artists in Geelong. These artists, who have genuine creative talent despite living with disabilities, benefit from practicing their art in a group setting. They receive one-on-one support from experienced artworkers throughout their creative journey.

ArtGusto offers various opportunities for artists to collaborate with the wider arts community, including workshops, access to artists in residence, community art projects, and volunteering. The ArtGusto team mentors artists by developing their artistic profile, promoting their work online, and providing sales support.

Running the studio day-to-day helps build confidence, encourages responsibility, and fosters a sense of ownership among the artists. Additionally, day trips to galleries and studios encourage participants to embrace new experiences and develop an appreciation for various art forms. This creative process also helps artists build a social network of like-minded people who share their passion for creativity.

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Public Advocate's Message

The purpose of the Office of the Public Advocate (OPA) is to protect and promote the rights, interests, and dignity of people with disability.

As Victoria's Public Advocate, a key focus of my work has been advocating for the human rights of people with disability, particularly in regard to the unacceptably high levels of violence they experience.

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.

Despite amendments to the Disability Act, Community Visitors do not have the resources to visit the increased number of properties they are now authorised to visit.

Line of sight

In a significant publication this year, *Line of Sight: Refocussing Victoria's Adult Safeguarding Laws*, OPA underscores the absence of a designated government agency in Victoria responsible for safeguarding and supporting adults at risk of violence, abuse, and neglect. Based on the experiences shared by individuals (de-identified to protect their privacy) the report outlines gaps in the current adult safeguarding laws and practices in Victoria. It formulates seven recommendations to ensure that our government remains vigilant in safeguarding adults who, due to their support needs, might be vulnerable to violence, abuse, or neglect.

The cornerstone recommendation is that the Victorian government provide a new or existing agency with the function to receive and assess reports of suspected violence, abuse, neglect or exploitation of at-risk adults. I will continue to advocate for the gaps in the adult safeguarding framework in Victoria to be addressed to ensure that we do not lose sight of any adult in our community who may be at risk of experiencing violence, abuse or neglect.

Disability Act amendments

Amendments to the Disability Act have brought welcome changes, expanding the number and types of properties that Community Visitors can visit. However, the National Disability Insurance Scheme (NDIS) information sharing limitations mean that OPA do not have access to the addresses of the properties CVs are now authorised to visit. This raises significant concerns.

Community Visitors perform a vital role of safeguarding the rights and interests of people with disability. They are the eyes and ears of the community and through their visiting, help make sure that Victoria's most vulnerable and marginalised individuals are kept safe from abuse, neglect or exploitation.

The discrepancy between the Disability Act amendments and the NDIS information sharing limitation means that despite the legal right to visit these properties, CVs are unable to provide their essential safeguarding function because they do not know where these houses are.

Disability Royal Commission

OPA continues to actively participate in and contribute to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC), an inquiry of great importance for people with disability and the disability sector. This year I appeared at two public hearings, and my office made two submissions.

On Thursday 1 September 2022, I gave evidence at the DRC *Public hearing 26: Homelessness, including experience in boarding houses, hostels and other arrangements*. At this hearing I highlighted examples of NDIS participants being financially exploited by unscrupulous service providers, sometimes being moved out of regulated Supported Residential Services facilities into unregulated accommodation.

In late 2022 I appeared as a witness at the Disability Royal Commission's *Public hearing into guardianship, substitute and supported decision-making*. At this hearing I spoke about the efforts in implementing the new Guardianship and Administration Act. The focus of this legislation is on supporting a person to express their will and preferences and to participate as much as possible in decision-making where they are under a guardianship order.

On 1 February 2023, OPA submitted the *Experiences of ABI and Inclusion* report which forms part of OPA's submission on how we can become a more inclusive society. This report demonstrates that listening to the voices of people with lived experience of disability is a vital step towards inclusion.

On 2 February, OPA submitted its *Parents and children with disability* submission to the DRC. This submission contains 10 recommendations that would lessen the systemic abuse inherent in the present system for parents and children with disability, and indeed, for all families.

OPA continues to actively participate in and contribute to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Reflections on guardianship

OPA welcomed the introduction of Victoria's Guardianship and Administration Act three years ago. However, OPA has growing concerns about whether the intention of the Act is being fully realised.

Of significant concern is the growing number of OPA clients under 65 who are under guardianship, and the increased time that people in this cohort are spending under guardianship.

It is imperative that advocacy services, encompassing legal advocacy, receive sufficient funding and are readily accessible to provide a less restrictive alternative to guardianship when appropriate.

Supported decision-making services also need to be appropriately resourced, with a range of options made available for people to access support for their decision-making. A funded supportive guardianship program is needed, so that people who do not have anyone in their lives to support their decision-making can have a supportive guardian appointed in appropriate circumstances.

A funded program dedicated to supportive guardianship is warranted, catering to individuals without support networks to aid in their decision-making. Elevating community awareness of supported decision-making's significance in upholding the dignity, equality, and autonomy of people with disability is crucial. Central to this endeavour is placing the voices of individuals with lived experience of disability at the forefront of initiatives aimed at fostering heightened community understanding of the Act and its intentions.

While my office is embarking on a pilot project to implement some of the recommendations derived from this report, a more comprehensive approach is essential. Overcoming the barriers hindering the Act's intended outcomes necessitates multi-faceted efforts, addressing incongruities between service systems and legislation. Furthermore, the need for resource allocation to alternatives to guardianship underscores the timeliness of a review, given that three years have passed since the Act's enactment.

Key reform calls

The current human rights conversations are shining a light on the issues facing people with disability in Victoria. I applaud all advocates who are calling for all people to be treated with dignity and respect. This entails equitable treatment, the ability to make personal choices, and the celebration of diversity, fostering inclusion across all spheres of existence.

I encourage you to read OPA's position statement and reports, and engage with our advocacy work. Together, we can empower individuals, champion human rights, and foster inclusivity.

Position statement on gag laws

Everybody has a story to tell and should be able to talk about their own experience loud and clear, no matter what the issue is. This isn't true in Victoria where people under guardianship or administration orders are prevented from talking about their own experience.

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

I encourage everyone to read OPA's position statement and to support this call for reform.

Charter of Rights for Parents with Disability

This year I was fortunate enough to speak at the launch of the *Charter of Rights for Parents with Disabilities*. The Charter is the result of collective advocacy and importantly this collaboration included persons with a lived experience of disability, and key disability organisations.

Significantly, the Charter provides a stronger framework for advocacy on disability rights issues within the child protection sector. It provides a language that people with disability and their advocates can use to describe what is required to live with dignity and respect, including requesting appropriate support to keep families together to build stronger families.

The Charter is not the end of the road, rather it is the beginning. More needs to be done.

Victorian Victims' Charter

As Victoria's Public Advocate I continue to see overrepresentation and unnecessary barriers facing people who are seeking, or in need of support. The Victorian Victims' Charter outlines principles to ensure proper recognition, respect, and essential support for victims and individuals hurt by criminal activities.

AGAC Conference

OPA played a key role in the organisation of the biannual Australian Guardianship and Administration Council (AGAC) Conference that was held in Melbourne in 2022. The theme was *Renewal: Putting rights into practice*. An array of impressive speakers from across Australia explored issues including people with ABI and the criminal justice system, the NDIS, supported decision-making, and human rights and adult safeguarding. I chaired a panel discussion on the topic of restrictive practices in aged care, and the indigenous perspective sessions on the topic of human rights and adult safeguarding.

In addition, staff from OPA presented on the *Healthy Discussions* Project, and challenged the assumptions often made about people with disability, particularly cognitive disability, and ways to address barriers to full participation in society.

Reaching the community

This year OPA has been using new channels to provide the community with information in a more accessible and timely manner. For example, audio recordings have been developed to provide the public with short and succinct information that is available whenever it's needed. The first two topics we have made audio recordings of have been viewed over 3,000 times.

In addition, our advice service has been hosting Question and Answer sessions about topics such as:

- enduring power of attorney
- advance care directive/advance care planning
- guardianship and administration
- do I need to apply for guardianship/administration for when my child with a disability turns 18?
- medical treatment decision-making.

My office has also worked hard to have the issues facing people with disability understood and shared by media. Some of the nuanced media coverage we had resulted in increased calls to our office, as well as increased support for our reform goals.

A changing workforce

This year we had a big change in staff, driven by the high take-up rate of the government's Early Retirement Package. This year, we recruited more staff than we have in the previous three years combined. But recruitment is only part of the story.

All new OPA staff have to complete a training program and engage in ongoing training and development to ensure everyone is effective in their role. We have also been able to promote continuing staff who have proven their capabilities to step up.

Reflecting on our commitment to diversity and inclusion, OPA has commenced recruitment for an Inclusion Projects Manager and several project officer roles as well as new First Nations Engagement Officers who will help keep the voice of lived experience at the centre of all we do.

OPA recognises the expertise that comes from lived experience of disability and has sought to ensure that the work of the office is increasingly informed by the voice of people with lived experience of disability.

OPA's highly successful *Healthy Discussions* Project, that produced the *HealthCARE Conversations* video has involved an advisory committee including people with lived experience of disability, who are OPA casual employees.

I want to ensure that OPA's work is increasingly informed by the voice of people with lived experience of disability and this committee has been expanded to enable greater impact across OPA. In June, the first information day was held to share our vision for how OPA would like the committee to be involved in other projects and work of the office. This including as part of an advisory committee for the new *Supported Discussions* Project, in workshops to assist OPA's Systemic Advocacy work, in assisting with delivering training for OPA volunteers in the Community Visitor and ITP programs. We also wanted to hear what OPA's casual employees were interested in being involved in. OPA is fortunate that our casual employees are all highly experienced self-advocates who are passionate about the rights of people with disability. I look forward to working with this terrific group of people.

I am exceptionally proud of the way in which OPA's staff and volunteers have risen to the challenges and opportunities all these changes have presented.

Thoughts for the future

The current authorisation scheme for restrictive practice usage in aged care settings under revised Quality of Care principles is due to sunset in December 2024. The revised principles were a considerable broadening of the range of people who can authorise restrictive practices. Consistent with my view, the Victorian Civil and Administrative Tribunal (VCAT) delivered a decision in 2022 that suggested a guardian would not normally be able to consent to aged care restrictive practices.

I will continue to advocate that guardianship should not be used as a substitute decision-making regime, used to consent to the use of restrictive practices in aged care settings. Guardianship is a last resort protective but restrictive mechanism; however, it can also be a rights' enabling mechanism that promotes the personal and social wellbeing of the person and give effect to their will and preference.

I will reiterate earlier calls for a senior practitioner model similar to that in the disability sector, and for the focus to be not on developing a consent, or authorisation model, but on reducing the use of restrictive practices in aged care.

Reflecting on this year, and the work of my office, I'm encouraged to see the increased attention placed on human rights for all Victorians. I look forward to another year of strong advocacy, human rights focus and empowering people with disability to speak up.



Dr Colleen Pearce AM
Public Advocate

Highlights in 2022–2023

Total number of guardianship matters

2,079

Number of new guardianship matters

977

NDIS participants under guardianship

574

Total number of investigations

314

Total number of medical decisions

397

Independent Third Persons interviews attended at 186 police stations

4,419

Total number of education sessions

163

Number of Systemic Advocacy presentations

6

Website downloads

64,898



Number of submissions

13

Total number of advice provided

8,020

Number of public hearings

2

Total number of enquiries related to NDIS

236

Number of reports/publications

3

Total number of enquiries related to enduring power of attorney

798

Number of position statements

1

Total number of enquiries where abuse and neglect is suspected

426



About us

OPA's vision is an inclusive society that respects and promotes the dignity and rights of all people.

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

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 powers and duties of the Public Advocate are set out in section 16 of the Guardianship and Administration Act. They include:

- advocating for the human rights and interests of a person with disability
- providing information and advice about the *Guardianship and Administration Act 2019* and the *Medical Treatment Planning and Decisions Act 2016*
- investigating allegations of exploitation or abuse of people with disability
- investigating, reporting, and making recommendations to VCAT regarding the need for guardianship or administration
- being a guardian, if appointed by VCAT.

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 and protecting people with disability from abuse, neglect, and exploitation. To this end, OPA provides a range of critical services for people with cognitive disability or mental health issue, including guardianship, advocacy, and investigation services.

Apart from its direct services, another vital role of the Public Advocate is to raise awareness and understanding about the *Guardianship and Administration Act 2019* and other legislation that affects individuals with disabilities or those who may lack decision-making capacity. OPA achieves this through various communication channels, including publications, a website with substantial visitor traffic, and effective media relations. OPA also offer an advice service and conduct community education programs on topics such as guardianship, administration, and enduring powers of attorney.

Systemic Advocacy

OPA promotes the rights of people with disability and mental health issues, by advocating for positive changes in attitude towards disability in society. 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 the reform goals.

OPA's in-depth research reports reveal complex systemic issues faced by people with disability and explore possible solutions. Incorporating real case studies, they often inform discussions and policy formation at the highest levels of government

Guardianship and Investigations

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 disability, where there is no one else suitable and willing to be the guardian.

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. Approximately one third of all matters referred to investigations do not result in the appointment of a guardian.

Advice and Education

The OPA Advice and Education service provides advice and information on a diverse range of matters that affect people with disability, including:

- guardianship and administration
- enduring powers of attorney
- medical treatment decision-making
- matters affecting people with disability
- referral to OPA's Community Visitors Program.

OPA Volunteers

OPA is supported by over 600 volunteers across three volunteer programs – the Community Visitors Program, the Independent Third Persons (ITP) Program, and the Corrections Independent Support Officer (CISO) Program.

Core works

OPA provides a number of services including advocacy, guardianship, investigation, research and policy publications, education and training services, and three volunteer programs – Community Visitors, Independent Third Persons, and Corrections Independent Support Officers Program.



Systemic advocacy: our reform goals

Adult safeguarding

Through 2022-23, OPA's systemic advocacy efforts continued to reflect its primary function as a safeguard against violence, abuse, and neglect experienced by individuals with disability.

This included:

- 13 Submissions
- 2 Hearings
- 6 Public presentations
- 3 Reports/publications
- 1 Position statement.

While all this work is important, and highlights the issues currently facing people with disability, OPA considers the publication and promotion of the *Line of sight: Refocussing Victoria's adult safeguarding laws and practices* report to be the major accomplishment of 2022-23.

Our publications

Line of Sight

Line of sight: Refocussing Victoria's adult safeguarding laws and practices was published by OPA in August 2022. This key report considers an adult safeguarding recommendation of the Australian Law Reform Commission (ALRC) in the policy and service context of Victoria. It puts forward a case for change, based on the Victorian Government's human rights obligations, changes in the delivery and oversight of key services for at-risk adults, and evidence that the state is losing sight of at-risk adults with tragic consequences and costs for individuals and society.

Line of Sight highlighted gaps in the regulatory and legislative systems that apply to at-risk adults, finding that the lack of an adult safeguarding agency within Victoria has led to numerous examples of system failure, which have resulted in severe adverse consequences for people with disability. OPA's key recommendation from these findings was that the Victorian Government act to establish a new, specialist adult safeguarding function, preferably within an existing agency. The report made six recommendations to improve the operation of current safeguarding legislation to protect at-risk adults from violence and harm.

The report highlights that Victoria currently has a patchwork of agencies with specific roles, functions and powers, largely focused on the regulation of specific services or providers for Victorians who have a decision-making disability. Some of these agencies lack the necessary powers to adequately protect and promote the rights of at-risk adults, while some adults fall between the various agencies completely. The array of regulators and services is complex and difficult to navigate, and there is no central point for service providers and the public to report concerns about the abuse, neglect or exploitation of an at-risk adult. While Victoria's family violence legislation and



reform initiatives are transformative, there are gaps in the reform framework in terms of preventing and responding to family violence against at-risk adults. Victoria's ground-breaking Family Violence Information Sharing Scheme does not apply outside the context of family violence,

and service providers that suspect or encounter other forms of abuse lack clarity about when, how and with whom information should be shared. This is compounded by the lack of a central 'hotline' for reporting concerns about the abuse of at-risk adults. Privacy laws are not well understood, and agencies are generally risk averse in terms of potentially breaching privacy obligations by sharing information about abuse, neglect and exploitation.

Effective prevention strategies, and the ongoing development of a comprehensive adult safeguarding system, require good data about the level, nature and risk factors for abuse, neglect and exploitation. Currently, the publicly available data is inadequate for this purpose. Effective safeguarding of at-risk adults also depends on having mainstream services, such as disability, aged care, and mental health services, with the capability to assess abuse risks, recognise signs of abuse, and support people who are being abused. As well as a need to ensure adequate funding and appropriate staffing of these services generally, there is need for additional training and resources to build the capacity of mainstream services to identify and respond to the abuse, neglect and exploitation of at-risk adults.

Reflections on Guardianship

In February 2023, OPA published *Reflections on guardianship: The law and practice in Victoria*.

The report was published three years after the commencement of the Guardianship and Administration Act, described by the Victorian Government as a milestone. In the report, OPA reflects on whether the Act is realising its intention.

The Guardianship and Administration Act is intended, among other things, to:

- align concepts and terminology with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- strike a balance between competing rights – recognising the right of people with disability to make their own decisions while ensuring mechanisms for protection
- prevent unnecessary intrusions on the right to make decisions
- recognise supported decision-making
- ensure VCAT orders are proportional and tailored to individuals' circumstances.

In this report, OPA reflected on how guardianship can protect and promote the rights of people with disability, but also identified concerning patterns of over-reliance on guardianship to fill service gaps, and service systems that operate in ways that do not adjust to the needs of people with disability. Whilst the Act has recognised the role of supported decision-making, OPA observes that more is needed to ensure people's right to autonomy is promoted to the fullest extent possible. It has become increasingly evident that further services and initiatives are needed to realise the intention of the Act. This includes funding to ensure the timely availability of advocacy and supported decision-making services to provide less restrictive options in appropriate circumstances and a funded supportive guardianship program available for people who do not have anyone in their lives to support their decision-making. There is also the need for increased community understanding of supported decision-making and its value in promoting the autonomy of people with disability.

OPA's data shows that the largest group of people who the Public Advocate is guardian for has changed, from older people with dementia to younger people with an intellectual disability.

Overall, OPA is being appointed as guardian to more people under 65 years of age and fewer people are having their orders revoked in under two years. This has significantly contributed to the demand for OPA guardianship services since 2015-16. The fact that the greatest rise in demand came from people with an intellectual disability, closely followed by people with an identified psychosocial disability, means the NDIS is likely a factor in this trend.

OPA is concerned that the intention of the Guardianship and Administration Act is not being fully realised. The report recommends that the Victorian Government undertake or commission a review of the Act and its implementation to inquire into, among other things, whether the Act is realising its intention.

OPA has commenced a pilot project, the *Supported Discussions Project*, to trial some of the recommendations made in the report relating to advocacy, to divert matters from guardianship, and community education co-designed with people with lived experience of disability.

The largest group of people the Public Advocate is guardian for has changed from older people with dementia to younger people with intellectual disability

Community Visitors: Great Expectations

This year OPA commenced research for a report highlighting the 35 years of the Community Visitors program. This report will be a key report for the 2023-24 year.

It will include an advocacy piece about how OPA thinks the Community Visitors Program should continue to operate in the NDIS context – but that it should not be confined to or defined by the NDIS context. OPA’s submission to the NDIS Participant Safeguarding Proposals recommends that the Australian government develop an agreed set of national principles for Community Visitor Schemes that recognise the value and diversity of state and territory safeguarding goals. The consultation and writing of this report is ongoing.



Disability Royal Commission

Supported residential services

OPA highlighted critical human rights concerns for people with disability living in Supported Residential Services (SRS) through the Public Advocate’s appearance at the Disability Royal Commission public hearing on Homelessness, including experience in boarding houses, hostels and other arrangements. OPA also made a submission to the Royal Commission on this topic.

In their opening address, the Chair acknowledged that the years of criticism from OPA and the Ombudsman formed a significant basis of their interest in the topic. Counsel Assisting also reaffirmed many of the problems Community Visitors have identified, including provider conflicts of interest, the ‘double dipping’ of funds, and the lack of transparency around funding.

Supported and substitute decision-making

The Public Advocate was called as a witness to the Disability Royal Commission’s hearing into guardianship, substitute and supported decision-making in October 2022. At this hearing, the Public Advocate reflected on OPA’s efforts in implementing the new Guardianship and Administration Act and its emphasis on decision-making that is consistent with the “will and preferences” of a represented person. The Public Advocate also spoke to current challenges with the guardianship system, such as the increasing length of guardianship orders due to the complexity associated with NDIS access and additional barriers to orders being revoked in a timely manner, including the need for safe and stable accommodation, the use of indefinite orders, the burdens of proving capacity at VCAT, and administrative delays across the guardianship system.

The Chair acknowledged that the years of criticism from OPA and the Ombudsman formed a significant basis of their interest in the topic

NDIS improvement

The NDIS reached its tenth year of operation in 2023, a significant milestone for the scheme's rollout. Many people, including those that OPA works with, have benefited significantly from the delivery of NDIS services, consistent with its policy objectives of choice and control, and increased social, economic and community participation, for people with disability. However, significant improvement is still needed to ensure that all people with disability are able to enjoy the transformational benefits originally envisioned for the NDIS. OPA has continued to contribute to ongoing reforms of the NDIS through several submissions to ongoing inquiries and reviews.

Joint Standing Committee – Inquiry into the Capability and Culture of the NDIA

In October 2022, OPA made a submission in response to the Inquiry into the Capability and Culture of the National Disability Insurance Agency (NDIA), identifying key areas for improvement at the agency across operations and strategy. These included:

- improved supported decision-making capability
- cultural safety for Aboriginal and Torres Strait Islander participants
- developing workforce capability
- a more explicit role as market steward
- strengthened safeguarding arrangements
- a rebalancing of policy priorities outside of financial sustainability and value for money.

NDIS Review

OPA's individual submission to the NDIS Review on Participant Safeguarding supported a safeguarding strategy with greater clarity about the scope of the National Disability Insurance Agency (NDIA) and NDIS safeguarding efforts and how they can support state and territory safeguarding frameworks for people with disability as well as broader national efforts – for example, the recommendations of the Australian Law Reform Commission's (ALRC) Adult Safeguarding report. OPA identified three areas for inclusion in the participant safeguarding strategy:

- sufficient and appropriate investment in participant capacity building and peer support opportunities
- a strong 'second tier' system to empower both participants and other people with disability
- clear safeguarding responsibilities and accountabilities which are communicated to all NDIS actors.

Information Sharing

As part of its advocacy efforts across adult safeguarding and NDIS improvement, OPA made numerous comments on information-sharing practices between key state and federal bodies such as OPA itself, the NDIA, the NDIS Quality and Safeguards Commission, and other state and federal bodies and community service organisations.

Appropriate information sharing ensures that relevant organisations can respond to violence, abuse and neglect in service delivery, and prevent it from occurring in the first place. However, across a range of OPA's program areas, including the guardianship program, its investigations service, and the Community Visitor program, staff still encounter difficulties sharing and obtaining relevant information about participants, even when this would be in the best interests of the participant.

Some instances in which crucial information about vulnerable NDIS participants is not shared between the NDIA and the NDIS Quality and Safeguards Commission, or any other relevant stakeholders, have led to significant adverse outcomes for NDIS participants.

Appropriate information sharing ensures that organisations can respond to violence, abuse and neglect in service delivery, and prevent it from occurring in the first place

The justice system

The overrepresentation of people with disability in the criminal justice system continues to concern OPA. In addition to its work in the Independent Third Persons program, OPA's Systemic Advocacy team made efforts to reduce the contact of people with disability with the criminal justice system through contributions to two family violence related initiatives.

National Principles to Address Coercive Control

OPA's submission to the Commonwealth Attorney-General's Department on the Draft National Principles to Address Coercive Control in November 2022, advocating for the needs of victim-survivors and perpetrators with disability or mental health issues. OPA argued that the draft National Principles should acknowledge the specific forms of coercive control that women with disability experience and the particular barriers to accessing justice they face in the context of family violence. The submission also noted that the criminalisation of coercive control could heighten barriers to safety for women with disability and mental health issues and increase the risk of primary aggressor misidentification, and cautioned against the use of criminal sanctions alone for people with disability who use family violence.

The mental health system and service gaps

Independent Review of Compulsory Treatment

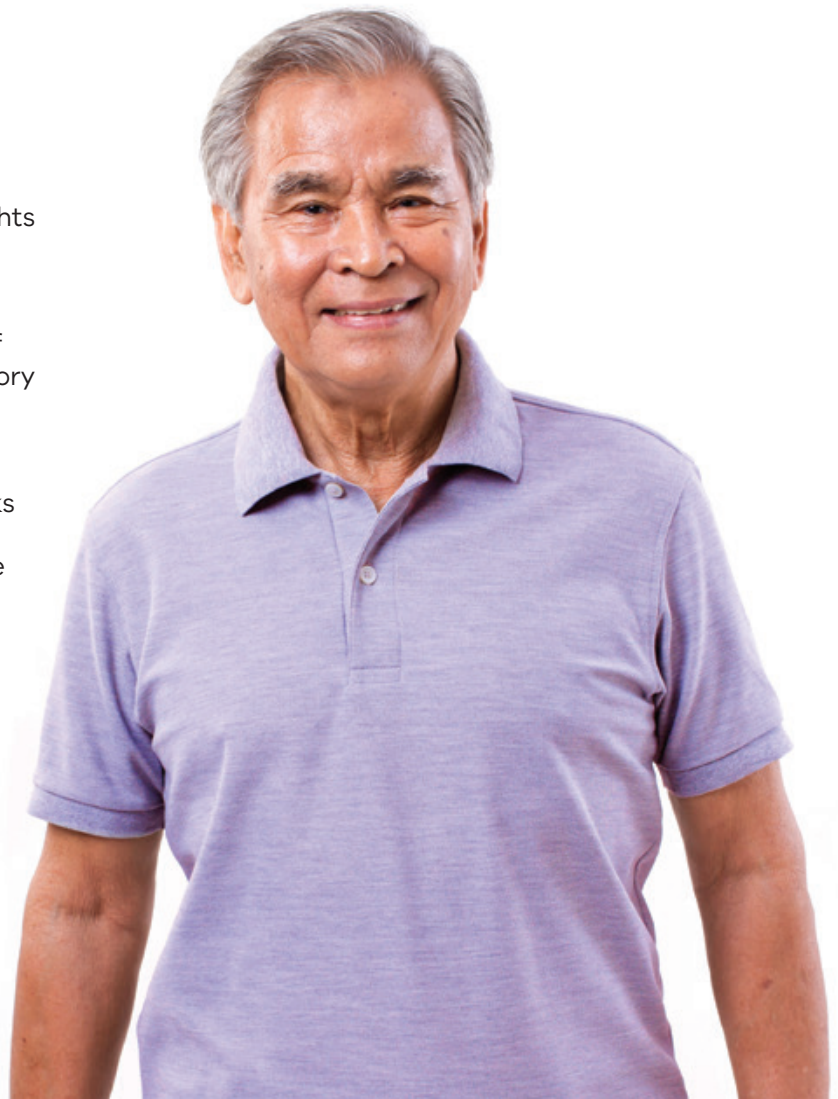
OPA contributed to the Independent Review of Victoria's Compulsory Treatment Criteria and Decision-making Laws. OPA's submission to the Independent Review considered how legislative reforms to the Mental Health and Wellbeing Act might facilitate greater respect for the human rights of consumers subject to compulsory treatment through the increased use of supported decision-making and reform of substitute decision-making legislation. The submission encouraged the use of existing opportunities for diversion from compulsory treatment that do not require legislative reform, such as better advance care planning, resourcing of community health services, and diversion from guardianship through the use of informal networks and decision-making supports. It further argued that legislative reform of the Act should mirror the decision-making principles of the Guardianship and Administration Act in centring the will and preferences of the person receiving treatment.

Supported decision-making

Consistent with the principles established under the Guardianship and Administration Act, OPA continued advocacy for supported decision-making practice reforms and resource developments. Supported decision-making is the provision of support that enables a person with a cognitive disability to exercise their legal decision-making rights (also referred to as legal capacity). Supported decision-making aims to provide a more contemporary alternative to substitute decision-making and is premised on the right of every person to make their own decisions and to receive whatever support is required to do so.

Right to tell one's own story

The Public Advocate also published a position statement in April 2023 advocating for the right of people who are under, or who have previously been under a guardianship order, to tell their story publicly. At present, Victorian legislation prevents anyone publishing or broadcasting information that could identify parties involved in guardianship and administration proceedings without the permission of VCAT. Significantly impeding the ability of people under guardianship or administration orders from speaking freely about their experiences.



Families

Child Protection Reform

OPA continues its commitment to working with child protection, advocacy and legal groups to promote the rights and interests of families and children where parents have a disability. This work has included:

- participation in the development by the Human Rights Committee of Funds in Court and the Charter of Rights for Parents with Disabilities
- the establishment of an Experts Forum with Star and Grandparents/Kinship Carers Victoria to consider issues of importance to parents with disability
- a submission to the Disability Royal Commission on the experience of parents with disability in the child protection and family law systems, and
- participation and liaison with researchers from the University of Technology Sydney and the University of Western Sydney undertaking a DRC commissioned report on parents with disability and First Nations parents in the child protection system.

Safe and Equal – Women with Disability Forum

OPA staff attended a disability forum coordinated by family violence services peak body Safe and Equal, providing an overview of the Guardianship and Administration Act. This includes its decision-making principles and the process for appointing a guardian, and their consistency with the policy and practice principles of the Multi-Agency Risk Assessment and Management Framework (MARAM) being implemented across family violence and other key social services to better identify and respond to family violence.

Senate Select Committee Inquiry into the Provision of and Access to Dental Services in Australia

People with disability often face issues and barriers when accessing dental care services in Victoria.

The Community Visitors Program has identified over 50 dental care issues of people living in community group homes and residential services.

In March 2023, the Select Committee into the Provision of and Access to Dental Services in Australia was established. In response to this Inquiry, the Public Advocate submitted a letter advocating for improved access to dental services for people with disability.

In the submitted letter, OPA identified the following recommendations to improve oral health outcomes in Australia for people with disability:

- community dental care clinics need to be accessible for people with disability
- dental health plans that enable access to regular dental care services each year for people with disability are important
- there should be collaboration of mainstream dental care services and disability support providers
- there should be improved education of dentists and oral hygienists on the needs of people with disability.

Access to a range of quality dental care services is vital for people with disability to maintain their health and wellbeing to enable them to pursue their goals and aspirations.

OPA's Community Visitors program identified over 50 dental care issues of people living in community group homes and residential services.

Advocacy

Advocacy is the act of standing beside the person with disability, promoting their rights and interests, and, if necessary, protecting them from violence, abuse, neglect and exploitation. Advocacy is a fundamental activity that occurs across OPA through the Advice Service, the Disability Act officers, the Community Visitors Program and the Guardianship Program.

Sarah's story

Sarah lives with intellectual disability and resides with her mother. Sarah disclosed to her support worker at her day program that her maternal uncle sexually assaulted her. Sarah's day program referred the disclosure to the local police station. Sarah was immediately removed from the mother's property and placed in 28-day respite accommodation. Victoria Police obtained an intervention order against Sarah's uncle on her behalf. Sarah was later removed from the respite accommodation by her mother and returned to the family home. Sarah's NDIS support coordinator contacted OPA through its Advice Service.

OPA undertook short-term advocacy on behalf of Sarah. OPA's advocacy actions included arranging numerous care meetings between Sarah's sexual assault support agency and NDIS service providers and referral to a disability advocacy legal service.

Names have been changed for privacy purposes.

This case highlights the evident gap in supporting women with cognitive disability, who may lack capacity to weigh up the risk of engaging with or considering family violence options. Family violence support services are not assertive and rely on the client engaging and initiating contact. Women attempting to remove themselves from an unsafe relationship may increase the danger to themselves. It is even more complex and challenging for women who may not have the cognitive capacity to initiate contact or make decisions regarding safety planning.

There is a pressing need for more assertive and tailored support systems that proactively address the unique circumstances faced by women with cognitive disabilities dealing with family violence.

Individual Advocacy

This year OPA provided individual advocacy for 282 matters. OPA will provide advocacy when there are no other options, or other efforts have been ineffective.

Of the individuals at the centre of these advocacy matters, 3.3 per cent had an acquired brain injury, 3.8 per cent had dementia, 40.4 per cent had an intellectual disability, 6.9 per cent had a physical disability, and 46 per cent had mental health issues.

Short term advocacy

In 2021, a review of short-term advocacy was conducted, and a position of Advocacy Support and Advice Officer was created to facilitate the referral of persons with disability living in supported residential settings to the Community Visitors Program. The number of referrals were significantly down, with 85 this financial year, compared to 157 in 2021-22.

Residential matters

The *Disability Act 2006* and the *Residential Tenancies Act 1997* (RTA) confer a safeguarding responsibility on the Public Advocate for people with disability who live in two different models of accommodation – group homes and Specialist Disability Accommodation (SDA) where there is an SDA residency agreement in place. Under these Acts, accommodation providers or other specified persons must provide a statutory notification to the Public Advocate of actions regarding the residential rights of a person with disability. This includes where an accommodation provider seeks to relocate a resident temporarily and where they are pursuing eviction. Further, an SDA provider must notify the Public Advocate of circumstances where the resident has provided notice that they intend to vacate the property.

The Public Advocate also receives safeguarding requests from concerned people and providers in the resident’s life about a range of residential rights issues. This is mainly in circumstances where accommodation providers may be acting inconsistently with their statutory obligations under these Acts or where notification is not expressly required under either Act (‘non-statutory notifications’). This could include circumstances where residents are threatened with actions infringing on their residential rights, including threats of eviction.

This year 173 statutory notices were received, a 144 per cent increase compared with the previous year. This increase reflects significantly more notifications related to temporary relocations, with most relocations (80 per cent) resulting from building repairs, renovations and the impact of floods.

The number of non-statutory notifications were similar to the previous year (21), with the majority of these matters requiring intensive advocacy and safeguarding responses due to significant concerns that the residents’ residential and human rights were being infringed upon.

Through this safeguard response, it has also been apparent that the intersection with the NDIS landscape creates difficulties for accommodation providers to meet their obligations within the legislated time frames that residential notices can be in place. Consequently, OPA has experienced a number of SDA providers attempting to deal with this issue by ‘mutual agreements’ with the resident or their family to enable a longer relocation period, actions that are inconsistent with the Acts, and which impact on the resident’s residential rights.

For instance, where an SDA resident is temporarily relocated based on behavioural reasons, this relocation period is limited to a maximum of 90 days. During that time, the SDA provider must take reasonable steps to resolve the issues for the person to return to their home at the end of the relocation period. However, constraints on accessing funding and the requirement to seek NDIS plan reviews can create long delays far beyond the 90-day limit. This in turn impacts on the resident being able to be supported appropriately for therapeutic interventions to be implemented or increased staffing numbers for the person to have a successful return to their primary residence.

Table 1: Residential notifications received by the Public Advocate

Notification type	2022-23	2021-22	2020-21	2019-20
Notices of temporary relocation	121	37	30	17
Notices to vacate	11	12	5	10
Notices of residents’ intention to vacate	41	8	11	3
Total statutory notifications	173	57	46	30
Other notifications (where no Notice issued, even if one should have been)	21	36	36	53
Total notifications	194	93	82	83

Compulsory Treatment in Detention

The Public Advocate has statutory safeguarding responsibilities for Victorians with intellectual disability currently subject to detention and compulsory treatment under a Supervised Treatment Order (STO) 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 and 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.

This year saw a slight decrease in the number of compulsory treatment hearings at VCAT, from 67 in 2021-22 to 59 this year. This is attributed to a number of people having their STOs revoked. This has been a pleasing outcome that has seen people with disability subject to significant levels of restrictions and detention having successfully engaged in the treatment process and their human rights promoted, resulting in them no longer being detained.

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 2018 (Cth) has increased the risk of persons being detained outside the statutory framework. This year, having become aware of persons being unlawfully detained, OPA has successfully advocated with care teams to ensure that applications for STOs be considered and appropriately made. Of note, new amendments to the Disability Act supported by OPA now make it an offence for NDIS providers to detain a person with an intellectual disability outside of an STO, with the previous offence provisions being limited to Disability Service Providers. These amendments are anticipated to result in increased applications for STOs in the coming year.

The Public Advocate has a formal safeguarding function in relation to persons informally detained outside the statutory framework in the Disability Act

Advice

OPA operates two telephone advice lines Monday to Friday between 9.00 am and 4.45 pm. One is a general line for all enquiries, and the other is a medical decisions advice line for health and allied health professionals only.

The total number of calls to our advice line was approximately 12,260, resulting in 8,020 instances of advice. This is a 20 per cent decrease from the previous year.

Table 2: How people contact the OPA advice service

	2022-23	2021-22	2020-21
Number	8,020	10,133	12,624
Percentage via email	14.4%	13.1%	14.4%

Calls to the advice lines remained the top method of communication, with requests via email representing 14.4 per cent of the mode of outreach to the Advice service.

Issue types

Guardianship and administration represented almost a third (29.3 per cent) of the inquiries received. Inquiries about planning for the future, including about instruments such as enduring powers of attorney, represented 27 per cent of inquiries.

There were 236 inquiries concerning NDIS issues, which is slightly lower than the previous year. Only 64 inquiries concerning aged care issues were received, compared to 193 calls from the previous year, likely attributable to the lifting of restrictions concerning visits to aged care facilities due to COVID-19.

Table 3: Top ten issue types

Issue type	Number	%
Guardianship and administration	2,352	29.3
Enduring powers of attorney	798	9.9
Other general inquiries	650	8.1
Medical treatment decisions	514	6.4
Advocacy	514	6.4
Planning for the future	429	5.3
Abuse and neglect	426	5.3
Existing authorities/instruments	425	5.2
Medical treatment decision-maker	355	4.4
Administration	337	4.2

Abuse

In 2022-23, the number of calls concerning suspected neglect and abuse was 426, representing 5.3 per cent of the total number of engagements by the Advice service, which is a significant increase from the previous year.

Caller patterns

Caller patterns remain consistent with previous years. Family members represented 36 per cent of persons engaging with the Advice Service, with health services, community support services and enquiries by people with disability the remainder.

Dive into quick Insights: OPA's new Audio Resources

Audio recordings have been developed with the aim of providing the public with short and succinct information to divert from phoning the advice service. Presently, two recordings are available on the OPA website, covering witnessing requirements for advance care planning and information for attorneys.

The overwhelming response, with 3,022 views for the witnessing requirements recording and 360 views for the Information for Attorneys recording, showcases the immense interest and accessibility of these resources.

You can find more information and view these recordings on our website.



Engagement with communities

Community Engagement and Education

Coming out of COVID restrictions, and staff shortages having an impact on running of sessions, OPA's regular online sessions have continued to be a success, with consistent attendance. OPA provides regular 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 on the day via a publicly available link on the OPA website.

Easing of restrictions have also seen a significant increase in in-person sessions this financial year with 23 sessions being facilitated around metropolitan Melbourne and regional Victoria compared to four last financial year.

Table 4: Number of education sessions delivered

	2022-23	2021-22	2020-21
Total sessions delivered	163	180	73
Audience	2,538	3,795	2,273



Culturally and Linguistically Diverse (CALD) Communities

Four education sessions were delivered to CALD communities this financial year through community organisations such as Fronditha, the Australian Hellenic Educational Progressive Association, and the Southern Migrant and Refugee Centre. A session was also conducted for the Chinese community at the Farnham Community Centre in North Melbourne.

Our Projects

Supported Discussions Project

The Australian Government Department of Social Services (DSS) has funded OPA to deliver the project titled *Supported Discussions: Promoting ways Victorian service system organisations can remove barriers to access to services by using supported decision-making strategies pilot project*. The project commenced in late April 2023 and is due to be completed by the end of June 2024. It relates to Australia's Disability Strategy and Safety Targeted Action Plan.

The project is about diversion of matters from guardianship in appropriate circumstances and has three components:

- education sessions for workers from sectors that commonly make guardianship applications. These sessions will promote exploration of less restrictive options and strategies for supporting people with disability to navigate service systems. The voice of people with lived experience of disability will be at the heart of these sessions.
- the development of a short video targeted at workers and co-designed with people with disability which will explore similar themes.
- the piloting of a model to divert appropriate matters from guardianship to short-term advocacy. The aim is to develop a model that could be replicated in other states and territories.

OPA will employ a project officer with lived experience of disability who will play a lead role in the development of the video and in the development and delivery of the information sessions. OPA will work with the disability advocacy organisation Leadership Plus on the project, with Leadership Plus assisting with the short-term advocacy component of the project.

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. The project highlights that in Victoria everyone with capacity to do so has the right to make their own decisions about their health and, to the extent possible, people should be provided with the support they need to make these decisions. The voice of people with lived experience is at the heart of the *Healthy Discussions* Project.

The project is funded by the DSS and began in April 2020. In November 2022, OPA received additional funding from DSS to continue to deliver the project up until the end of June 2024. The project 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.

The project uses a best-practice model of people with disability leading the design and delivery of the project in a paid capacity. The project coordinator and project officer have lived experience of disability, as do members of the steering committee, which includes people who are self-advocates with lived experience of intellectual disability, acquired brain injury and autism.

There are three key components to the project:

- the *HealthCARE Conversations* video (short version and extended version)
- information sessions for health practitioners
- a series of audio interviews on human rights that challenge the general community's assumptions about people with disability.

During this financial year:

- a long version of the *HealthCARE Conversations* video was finalised.
- the short and long video versions were promoted to universities, hospitals and health services. OPA began discussions with two universities in relation to the video being embedded in relevant health-related courses. Having the video embedded into relevant courses will be a major aim for the project's final year. If successful, the video will continue to have an impact well beyond the project's life.
- eighteen information sessions were provided for health services with a total audience of over 400 attendees. These included information sessions for metropolitan and regional health services and hospitals.
- the *Healthy Discussions* Project Officer led audio interviews:
 - on the topic of 'What are human rights?'
 - with Women with Disabilities Victoria
 - with the president of Brain Injury Matters
 - on experiences of acquired brain injury (ABI).

The *HealthCARE Conversations* video and audio interviews can be accessed through the OPA website: www.publicadvocate.vic.gov.au/opa-s-work/healthy-discussions-project.

The voice of people with lived experience of disability is at the heart of the *Healthy Discussions* project

Experiences of ABI and Inclusion

The *Healthy Discussions* Project Officer led the development of a report about experiences of ABI and inclusion. The report was informed by her audio interviews with five people with lived experience of ABI, her own lived experience, her interview about human rights and her own reflections on human rights.

Below are some quotes from the audio interviews that appear in the report.

“Initially, after having the ABI, my taxi driver would always turn to my family, friends or carer and ask them where I’m heading to. I felt quite inexistence, and as though don’t matter at all. I think this has improved a little.

“When people say, ‘Oh, you’re an inspiration’, I think I’m not interested. I’m just doing the best I can do. And when I can achieve something I want, I’ve learnt to congratulate myself.

“With me, I feel that most of society does think this is a simple hurdle one must overcome, and go forward. And it’s taken me so many years, and it’s not little at all.

“After my brain injury, I was just like a new person. I mean, different in the same body, but a new person. So, my whole life was changed accordingly...

“Either people embrace you, or people run away from you.

“It has enabled me to be put into a community, I suppose, with like-minded people who are trying to get the better of themselves having a brain injury.

OPA shared the *Experiences of ABI and Inclusion* Report with the Disability Royal Commission in its submission on how our society can become more inclusive. In the letter accompanying the report, OPA highlighted that it considers that hearing directly from people with lived experience of disability is the best way to challenge deeply rooted exclusionary attitudes and prejudices.

Communications and Media

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

- the provisions of the Act and other legislation dealing with or affecting persons with disability or persons who may not have decision-making capacity
- the role of VCAT and the Public Advocate
- services provided to persons with disability.

OPA is actively enhancing community engagement and information dissemination through innovative methods. This includes avenues like podcasts, audio recordings, LinkedIn updates, and convenient virtual drop-in sessions. These initiatives ensure that information is readily available and accessible to the community exactly when it’s needed.

Website

OPA’s website, publicadvocate.vic.gov.au offers a comprehensive compilation of all OPA publications, along with pertinent information customised for the community and available in various formats.

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

Website users

This year there were 189,899 users compared to 151,717 users last year. As in previous years, most visits to OPA’s public website focused on powers of attorney and medical treatment decision-making information.

Online publications

In line with the Victorian Government’s Digital First Strategy, all OPA publications are available online, and a majority of these available in HTML and accessible formats as well as PDF.

OPA maintains a suite of approximately 120 publications designed to help make the laws around guardianship and decision-making, including enduring powers of attorney and medical decision-making accessible, relatable and current.

In 2022-23 a total of 64,898 resources were downloaded. This is an increase of 17 per cent from last year, and much closer to the 2021-22 figure of 72,058.

Table 5: Publications downloaded from the OPA website

Downloaded publication	Total downloads
Enduring power of attorney appointment form – short version	11,762
Take Control – June 2022	7,302
Enduring power of attorney appointment form – long version	4,375
Advance care planning and substitute medical treatment decision-making	4,250

The number of OPA publications distributed by its distribution partner Victoria Legal Aid was 21,502, a 12.21 per cent increase from last year (19,298). This is despite the publication *Your Voice, Trust Your Choice* being available for download only (not hard copy distribution). Additional stock of this publication has been ordered for the future.

Table 6: Publications requested via Victorian Legal Aid (2022-23)

Publication requested via Legal Aid	2022-23
Abuse is not OK	1,591
Take Control	17,528
Supported decision-making	1,147
Guardianship and administration	1,236

LinkedIn

OPA is growing the organisation’s LinkedIn profile, with 150 new followers this year, almost doubling our audience. Most people following the OPA LinkedIn page identify as being from the legal sector.

OPA Updates

OPA Updates is an accessible electronic newsletter designed to provide stakeholders with timely information, valuable resources, promote upcoming events, and support advocacy efforts. Throughout the 2022-23 year, six newsletters were released bi-monthly to our distribution list, comprising 1,338 people, excluding OPA staff.

There was a 20 per cent increase in subscriber numbers, with 269 new subscribers joining us this year. Only 30 individuals chose to unsubscribe, highlighting *OPA Updates'* continued interest and relevance. This positive response was reflected in our email open rate, which consistently exceeds 50 per cent, indicating a strong engagement with the content.

Media advocacy

OPA's work with the media continued this year, resulting in its important issues featuring 24 times in traditional media such as newspapers and TV broadcasts. The issues discussed throughout these articles include:

- 'Gag' laws that restrict the rights of people under guardianship to talk about their experiences
- The Public Advocate's award to the Funds in Court Human Rights Committee
- The Public Advocate's award to Victoria Police who go above and beyond to ensure people with disability are treated with respect and dignity, including the use of ITPs in interviews
- Community Visitors and the need and celebration of volunteers
- Issues about the existing gaps within safeguarding, resulting in poor outcomes for people with disability
- The NDIS and how changes to the disability sector are impacting Victorians with disability.

Public Advocate Award

In December 2022, the Funds in Court Human Rights Advisory Committee was awarded the Public Advocate Award. The committee aims to improve the lives of Victorians with disability by removing any barriers facing them in the justice system.

This award was given for the programs that the committee has implemented to provide direct support for people with disability. This includes working with the Department of Justice and Community Safety to introduce the Intermediaries Program, which assists people with complex communications needs who require an intermediary for a criminal matter. The Committee also promoted the use of Communication Facilitators in civil matters to make sure people with disability have their voice heard in the management of their affairs.

There has also been significant work done to divert people with cognitive disability from the criminal justice system through a community wrap-around approach.

The Human Rights Advisory Committee operates a number of working groups comprised of members with specific expertise to deliver key Committee initiatives. The Human Rights Advisory Committee was able to elevate the lived experience voice through the establishment of the Beneficiary Advisory Committee, to hear from those involved with Funds in Court.

The Public Advocate has a formal safeguarding function in relation to persons informally detained outside the statutory framework in the Disability Act

Public Advocate Police Awards

The Public Advocate’s Police Awards recognise outstanding police service to people with disability. These awards tell an important story about Victorians with disability who become involved with the criminal justice system and the way the police work with them to achieve a just outcome.

In March 2023, OPA announced the 2022 Public Advocate Police Awards:

- **The Ben Bodna Award**

Named after Victoria’s first Public Advocate, this award recognises exceptional leadership in support of Victorians with disability. This year, Acting Senior Sergeant Melanie Castles-McKeown received the award for her championing of the Law Enforcement Torch Run or LETR. This charitable program provides the opportunity for Victoria Police members to engage and connect with athletes in the community with intellectual disability and support their journey to the Special Olympics.

- **The Public Advocate Award for Outstanding Police Service to People with Disability (police nominated)**

This year the award went to Sergeant Barry Randall of the Forest Hill Police Station for creating Operation Soul Surf. The therapy program provides an opportunity for members of Victoria Police who are impacted by trauma to experience the healing power of surfing and the ocean.

- **The Public Advocate Award for Outstanding Police Service to People with Disability (community nominated)**

The Victoria Police Soccer Club received this award for its participation in an annual soccer match with the All-Abilities Soccer Academy. The All-Abilities Soccer Academy is supported by volunteers and parents who have children with disability.

ITP Awards

The Independent Third Persons Police Awards recognise members of Victoria Police who demonstrate the ideals of the ITP program by improving outcomes and delivering a service to people with disability that is inclusive and responsive, and going above and beyond in ensuring people with disability are not disadvantaged during police interviews

The last financial year was the busiest in the program’s history with 2,783 clients supported in 3,969 interviews at 150 police stations and other locations across the state.

This year, Frankston and Bairnsdale Police Stations each won awards for excellence in using Independent Third Persons. Recipients are nominated by colleagues, Independent Third Persons (volunteers who support people with disability in police interviews), and members of the public.

Frankston police station called for an ITP 71 times during the year, a 14 per cent increase on the previous year, and Bairnsdale called on an ITP 103 times during the year, a massive 60 per cent increase in engagement from the previous year.

The last financial year was the busiest in the program’s history with 2,783 clients supported in 3,969 interviews at 150 police stations and other locations across the state

Volunteers

OPA is proudly supported by over 600 volunteers across three unique volunteer programs – Community Visitors, Independent Third Persons and Corrections Independent Support Officers.

OPA's volunteers reflect a rich tapestry of communities, backgrounds, life skills and experiences ranging from retirees, semi-retirees, and working professionals right through to students. Age is no barrier to volunteering for OPA, with the youngest volunteer being 21 years of age right through to the oldest being 89 years young!

Whilst diverse, all OPA volunteers share a common goal of wanting to make a difference in the lives of people with disability and upholding and safeguarding their rights. They achieve this aim by tirelessly advocating for Victoria's citizens at risk of exploitation or harm.

OPA's volunteers dedicate countless hours to their roles, with some volunteers making themselves available 24 hours, 7 days a week and/or others volunteering for over 30 years or more.

Figure 1: Volunteers by age

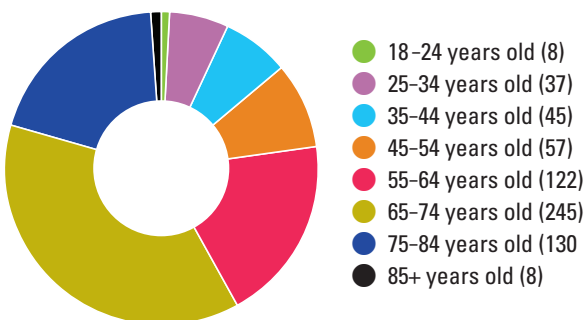
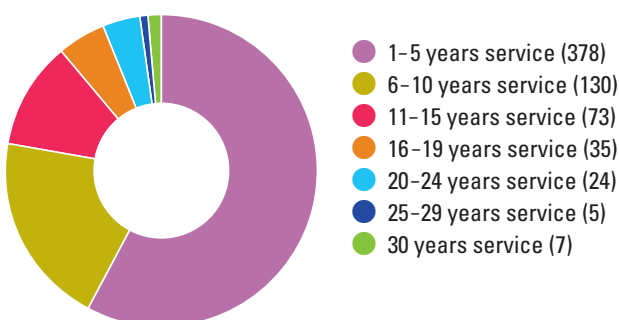


Figure 2: Volunteers by years of service



Volunteer Engagement

OPA believes strongly in engaging the volunteer voice in its work. A Volunteer Consultative Committee comprising representatives from all three programs and chaired by OPA's Volunteer Coordinator meets quarterly. The committee develops and reviews overarching volunteer policies and has input into any major strategic initiatives that affect their roles. In the last financial year, the committee developed a COVID vaccination policy for volunteers, initiated action plans from the 2022 OPA volunteer survey and provided input into developing the 2022 OPA Volunteer Conference.

In addition, a volunteer Board member from the Community Visitors Program is part of OPA's Strategic Leadership Committee which meets monthly.

In appreciation of its volunteer workforce, OPA held a webinar during National Volunteer Week in May 2023, with the theme being aligned with Volunteering Australia's theme for the year – *We are the Change Makers*. The webinar included a personal thank-you from the Public Advocate, program updates and guest speakers from the Butterfly Foundation who support people impacted by an eating disorder or body image issues.

Recruitment, Training, Support and Recognition

OPA places significant emphasis on the training and support of its volunteers to ensure their effectiveness in their roles. During 2022-23, OPA organized 88 sessions dedicated to training and professional development, covering a range of subjects such as NDIS, managing restrictive practices, and addressing vicarious trauma. These sessions saw participation from more than 400 volunteers.

OPA Volunteer Conference

The OPA Volunteer Conference, held biennially, convened in October 2022 and welcomed over 200 volunteers. Titled *Better Together*, this conference marked the first large-scale gathering of volunteers and staff since the pandemic's onset. The event offered a platform for volunteers to engage with keynote speakers, receive updates on programs and the sector, and foster connections among fellow volunteers and OPA staff. The conference also took the opportunity to acknowledge long-serving volunteers for their years of dedicated service.

"Conferences are always great – networking, speakers, food, venue. As a volunteer, I always feel valued going to OPA conferences."

OPA volunteer conference attendee



Sarah Forbes (Manager, Safeguarding, Inclusion & Volunteer Programs) (left) and Dr. Colleen Pearce (right), presenting Disability Community Visitor, Dr Dallas Isaacs, with her 20-year certificate.

Barbara

A VOLUNTEERS' STORY



While volunteering as an Honorary Probation Officer and an Independent Person supporting young people at risk, I saw an advertisement in the local paper advertising for Independent Third Persons – that was 34 years ago.

The role of an Independent Third Person has offered me the opportunity to support those persons who have a disability, ensuring they have a sound understanding of their rights and the police cautions and procedures when, for whatever reason, they find themselves attending a police station.

It is very satisfying to receive on a regular occurrence appreciation expressed by the clients for my being there in my support role.

I have always viewed my volunteering in various roles over the past 50 plus years as being fortunate, to be able to give back to the community at large.

*Barbara Birthisel
Independent Third Person*

Sebastian

A VOLUNTEERS' STORY



After travelling overseas on an exchange program and witnessing an unsupportive mental health system, upon my return to Australia I joined the Community Visitors Program. I wanted to give back to the community and the program aligned with my values and ensures upholding the rights

and dignity of vulnerable people and it pursues quality of care and service in Victoria.

I've found the visiting insightful and rewarding, particularly when your recommendations and concerns are put in action. Every visit I have learnt something new.

*Sebastian Waluk
Mental Health Stream Community Visitor*

Community Visitors Program

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

They are appointed under three separate Acts of Parliament: the *Disability Act 2006*, the *Mental Health Act 2014*, and the *Supported Residential Services (Private Proprietors Act) 2010* for a three-year term.

In the last financial year, OPA was supported by 384 appointed Community Visitors. In addition, OPA supported an additional 117 volunteers who are in training, waiting to be appointed.

The data from the Community Visitors program is published in a Community Visitors Annual Report that is also tabled in parliament. These reports are available on the OPA website.

Program Highlights

The Community Visitors Program celebrated 35 years of operation in 2022. This remarkable milestone was celebrated at the OPA Volunteer Conference in October 2022.

Where possible, OPA nominates volunteers for external awards to ensure that the valuable work they do in their communities is recognised. OPA contributed to an Order of Australia nomination for Community Visitor Mary Howlett (*below, centre*) who was recently recognised in the King's Birthday Honours List.

Community Visitors Annual Meeting

The Community Visitors Program held their annual meeting on 30 June 2023.

A highlight of the meeting was a presentation by Maggie Toko, Commissioner, Consumer, Mental Health and Wellbeing Division from the Department of Health.

The meeting also included presentations by each of the Community Visitor Boards and welcomed in new Community Visitor Board Members to the Disability, Mental Health and Residential Services Boards and farewelled existing Board members.

Certificates of Service were also presented to long-serving Community Visitors.

The meeting was held on-site but also live-streamed for those unable to attend.



Dr Colleen Pearce (right) and Community Visitor Board Members, Anne Fahey, David Stafford, and Linda Peterson, celebrating 35 years of the Community Visitors Program.



Mary Howlett OAM
Community Visitor



Commissioner Maggie Toko
presenting at the Community
Visitors Annual Meeting

Independent Third Persons Program

Independent Third Persons (ITPs) are volunteers who provide essential safeguarding for alleged offenders, offenders, victims and witnesses with cognitive disability (including intellectual disability, mental health issues or ABI) in police interviews and procedures.

Interviews

There has been a significant increase in interviews in recent years, however due to the pandemic, lack of resourcing and understaffing in the program, the number of volunteers has not increased alongside the higher demand. Almost half of all interviews were attended by a small, extremely responsive and dedicated group of ITPs

This year, ITPs attended the most interviews in the program's history, with 147 ITPs attending 4,419 interviews at 186 police stations and other locations across Victoria.

The program has continued to improve its attendance rate; in the last year 99.6 per cent of requests for an ITP in police interviews, procedures and bail hearings were fulfilled. Remote attendance by phone or video accounted for 1,445 or 34 per cent of interviews.

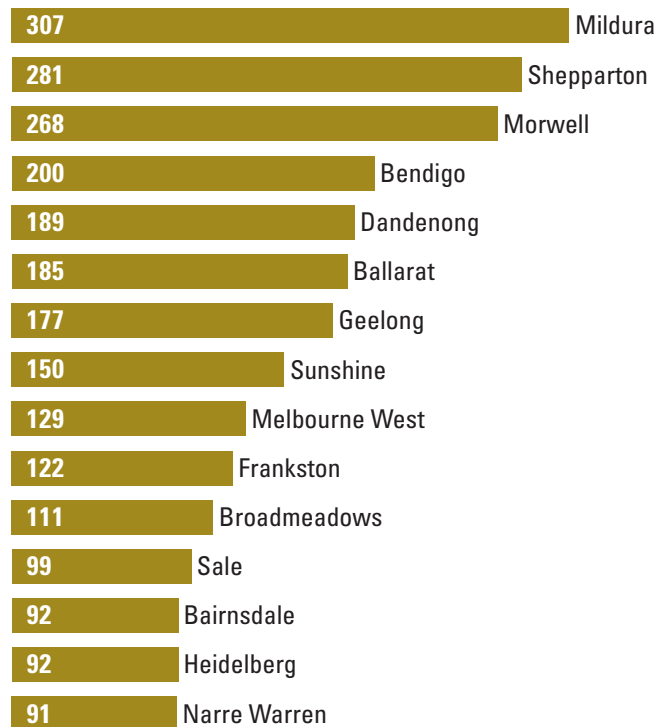
Figure 3: Independent Third Persons interviews



Location of interviews

As well as police stations, ITPs also attended interviews and procedures at client homes, hospitals, prisons and disability facilities.

Figure 4: Independent Third Persons interviews – busiest police stations



Offences

As in previous years the ITP program continues to observe many people supported in interviews related to assault offences, theft and breach of bail. The high number of people interviewed for breach of bail is particularly concerning given many people with cognitive disability may not fully understand bail conditions and are therefore at risk of new criminal offences being recorded.

First Nations people

First Nations people are significantly overrepresented in the ITP program. Of all alleged offenders supported by an ITP in 2022-23, 25 per cent were First Nations. For victims and witnesses, the rate was six and nine per cent respectively. The ITP program needs increased funding to provide culturally safe and responsive support to First Nations people.

Operations

The ITP program successfully launched new online reporting forms to improve data collection and reduce privacy risks. In 2022-23, 95 per cent of all reports were submitted electronically and are providing better demographic data to the program.

Volunteers have been returning to in-person training as pandemic restrictions have eased. With critically low volunteer numbers due to the pandemic, the focus for training in 2022-23 was on vicarious trauma and burnout.

John's story VOLUNTEERS IMPACT

Long-serving ITP, Sandra, shared an encounter that her late husband, John, also an ITP volunteer for many years, had with an ITP client.

John was waiting at the police station for Sandra to complete an interview when he was approached by a woman in the waiting area. The young woman introduced herself to John and shared that she recognised him as the ITP that had supported her during a police interview. The young woman was at the station to have documents witnessed for a car she was buying. She happily told John that since they had last met, she had found a job and turned her life around. The young woman thanked John and let him know that his support and reassurance that night had played a pivotal role in her life improving. John hadn't remembered the woman but was moved by the chance meeting and reminded of the important role ITPs play for so many people.

Corrections Independent Support Officers Program

Corrections Independent Support Officers (CISOs) are experienced ITP volunteers who also volunteer in the CISO program. CISOs are available to support and assist prisoners with a diagnosed intellectual disability during General Manager's Disciplinary Hearings (GMDHs) at every adult prison in Victoria. CISO volunteers ensure prisoners understand and exercise their rights throughout the hearing process.

Four CISOs attended hearings in 2022-23. Since the previous financial year, hearings attended by CISOs have increased from 49 to 67 and more than 75 per cent were at just one prison.

Requests for CISOs has increased following the pandemic when many prisons could only provide remote attendance. In 2022-23, First Nations people comprised 24 per cent of all clients supported by a CISO.

Table 7: CISO hearings by prison (2022-23)

Prison	CISO supported GMDHs
Port Phillip Prison	51
Melbourne Assessment Prison	4
Marrngoneet Correctional Centre	4
Ravenhall Correctional Centre	4
Melbourne Remand Centre	3
HM Prison Barwon	1
Total	67

The CISO program continues to be critically underfunded and requires an urgent increase in resources if the program is to continue and to meet increasing demand. OPA understands that Corrections Victoria is working to divert prisoners with intellectual disability away from GMDHs.

Guardianship and Investigations

Investigations

When VCAT receives an application for administration or guardianship, it can refer the application to the Public Advocate for investigation to determine if an order is appropriate in the circumstances. This assists in achieving the aim of the legislation for a substitute decision-maker to be appointed only where this is the least restrictive option available.

There was a significant drop in the number of referrals for investigation this year.

Figure 5: Investigations



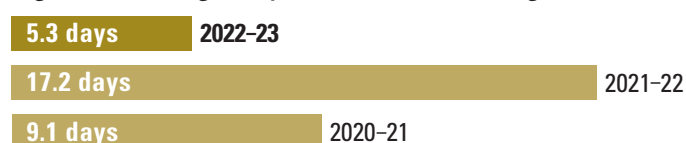
Table 8: Top 10 reasons for VCAT referring applications for investigation

Issue type	Total	%
Evidence of need for order	100	17.8
Accommodation	89	15.8
Evidence of capacity	63	11.2
Conflict between individuals	48	8.5
Welfare and safety at risk	35	6.2
Possible financial exploitation	29	5.2
Evidence of disability	23	4.1
Possible breaches of duties by financial attorney	21	3.7
Medical treatment	20	3.6
Neglect – self and others	19	3.4

In addition to referrals received from VCAT, nine referrals were received from courts (two from the Supreme Court, three from the County Court, and four from the Magistrates' Court) to investigate whether it was appropriate for a guardian, supportive guardian, administrator or supportive administrator to be appointed for a self-represented litigant.

Once a referral for investigation is received, it takes an average of 5.3 days for the matter to be allocated. This is significantly faster than previous years.

Figure 6: Average Days to Allocate Investigations



Demographics

Dementia was again the most common disability in matters referred for investigations. The second most common disability was intellectual disability, closely followed by mental health. These disability types have consistently been the top three types since 2020.

Table 9: Disability types for investigation (2022-23)

Disability Type	Total	%
Dementia	127	28.3
Intellectual Disability	112	25
Mental Health	105	23.4
Acquired brain injury	49	10.9
Physical	40	8.9
Not specified	15	3.3

Special medical procedures

OPA received eight referrals concerning applications for consent to special medical procedures this year.

Special medical procedures are those which can render a person permanently infertile, terminate a pregnancy or transplant tissue. They also 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 issues involved.

VCAT Liaison

VCAT Liaison Officers commenced working out of an office at VCAT's premises in March 2023, following a hiatus of approximately two years, during which the service was provided remotely due to the pandemic.

OPA has a memorandum of understanding with Department of Families, Fairness and Housing (DFFH) Child Protection, and provides consultations to make sure that guardianship is only used where it is the least restrictive option for young people with disability who are exiting from the child protection system.

In the 2022-23 year, 122 consultations were provided to DFFH Child Protection regarding the suitability and necessity of guardianship and administration orders for minors transitioning out of residential care. In 2021-22, 277 consultations were provided.



Statutory guardianship: a year of change

2022-23 has been a year of significant change and transition for OPA's Guardianship Program. Additional funding for this program was received in the 2022 budget, recognising the significant impact of new legislation and a changing disability service sector on the role and expectations of guardians.

This increased funding provided the opportunity to introduce a dedicated NDIS guardianship team, focused on specialised support to represented persons and other guardians, as well as identifying and addressing system issues that impact on service access and the ability of guardianship to fulfill its intended role.

Funding also provided for process mapping and service analysis, including extensive consultation with guardians to assess how OPA can engage earlier and more effectively with people under guardianship. This is aligned with issues raised in the Disability Royal Commission guardianship hearing in November 2022 where lived experience witnesses spoke about their experience of guardianship and administration, sometimes involving limited understanding of the intended role of a guardian or administrator in their life and the need for more proactive engagement. Recommendations from this work will be tested through a pilot of a different model of intake and triage due to commence in August 2023.

The other factor that impacted the Program this year was the high take-up rate of the government's Early Retirement Package. OPA lost about 30 per cent of its staff, many of whom were in the Guardianship Program. This included the Guardianship Program manager and all the team leaders. The loss of so many experienced staff at once, even though it was spread out over many months, has brought both challenge and opportunity. The challenge has been replacing so many staff in such a short timeframe and against the backdrop of record employment levels. It takes considerable time to train an effective guardian, and OPA is still in this process. On the other hand, this created enormous management opportunities for continuing staff who have shown themselves capable of filling these gaps.

New matters

This year 977 guardianship orders were made, a slight increase from the preceding year. This is a 3 per cent increase since 2020. There were 16 urgent orders this year, a drop of more than 60 per cent from last year.

This year, there were 482 reappointments, a significant increase from last year's figure of 307, representing a 36 per cent rise from the previous year. The distribution between new appointments and reappointments is 53 per cent and 47 per cent, respectively. This pattern of guardianship appointments follows the normal trend, with last year being an exception due to the backlog of reappointment hearings at VCAT caused by the pandemic.

Table 10: Guardianship Orders made (2022-23)

	2022-23	2021-22	2020-21
Guardianship Orders	961	946	944
Temporary/Urgent Guardianship	16	26	20
Total	977	972	964

Other factors which have impacted guardianship this year include demographic changes of clients, workload complexity particularly associated with the NDIS and mental health systems and the impacts of the changed paradigm of the new Act. The table below shows the changes in guardianship clients over a seven-year period from 2017 to the present.

Table 11: Change in guardianship clients over time

Year	Type of client			Total
	NDIS	Mental Health	Indigenous	
2022-23	574	403	49	977
2021-22	496	348	37	972
2020-21	530	352	42	964
2019-20	464	293	28	942
2018-19	412	295	29	955
2017-18	256	283	21	945
2016-17	203	290	22	944
Grand Total	2,935	2,264	228	6,699

Working with First Nations People

OPA recognises that First Nations people are overrepresented as a proportion of the number of people under OPA guardianship and this has increased over time. Indigenous clients deal with multiple factors of disadvantage, including:

- poor health leading to a myriad of problems including early onset of aging
- need for access to culturally safe services
- thin markets for services due to their concentration in rural or regional areas
- poorer educational outcomes
- trauma.

OPA recognises the need to take steps to better understand the factors that contribute to the use of guardianship for First Nations people and to

support their engagement with OPA. OPA has previously developed the *Walk with Me, Talk with Me* publication that guides staff in culturally aware practice, and *Your Life, Your Choice*, a joint project with the Victorian Aboriginal Legal Service.

Building on previous work under OPA's Koori Inclusion Action Plan, OPA created two First Nations positions to improve services for these clients. This has also allowed us to work with VCAT's Koori Engagement team to identify First Nations people at an early stage and support service navigation for both OPA and VCAT. These roles are able to engage directly with people subject to guardianship and with staff to provide advice and support for working with First Nations people. We look forward to building on this early work in the coming year.

Jamie's story

Jamie is a young Aboriginal person with cognitive disability and mental health concerns. A guardianship order was in place to support Jamie for several years, with only a few decisions needing to be made. Jamie was involved with a number of different services that provided the support they needed.

Unfortunately, Jamie's mental health deteriorated in 2022, leading to increased use of cannabis which Jamie reported relying on to manage their mental health.

Around the same time, Jamie's home was uninhabitable because of water damage and mould, further exacerbating their fragile mental state. This meant that Jamie now needed additional organisations to arrange replacement housing in a location where they have a strong connection to community and country.

OPA and the other services collaborated to advocate for Jamie's housing rights and mental health needs.

Despite DFFH's offers of alternative properties, the Public Advocate successfully lobbied for Jamie's rights as a long-term tenant with support from the Victorian Public Tenants Association (VPTA). The collaboration and extended advocacy led to DFFH refurbishing the former property in line with Jamie's wishes.

Returning to this property meant Jamie could continue using existing support services and remain in their preferred area.

Names have been changed for privacy purposes.

Matters carried over

In addition to the high number of new VCAT orders, the number of guardianship orders carried over to this financial year is also high, at 1,102, which is almost 100 cases higher than the previous year. This has put pressure on OPA’s ability to make decisions according to a represented person’s will and preferences, or to support people in making decisions where possible, as envisioned by the Guardianship and Administration Act when it began in March 2020.

Guardianship demographics

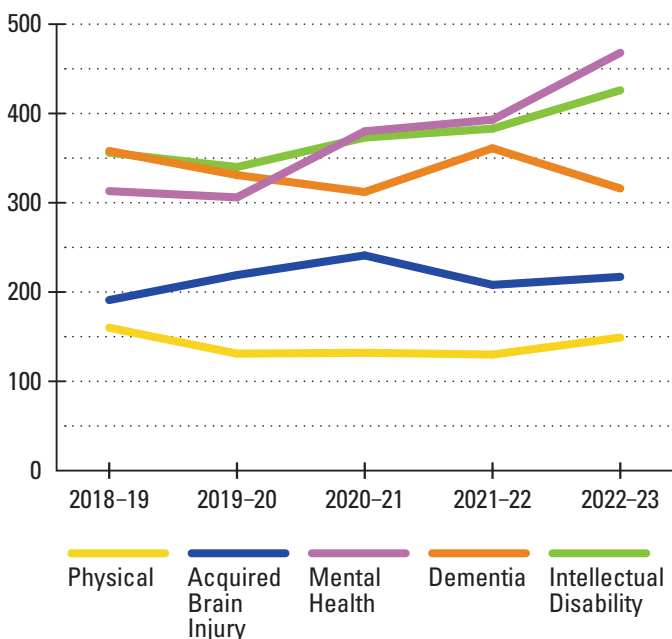
Changing disability profiles

The year sees the continuation of the trend of the last five years with fewer of the people OPA works with having a diagnosis of dementia, and a rise in clients with intellectual disability and mental health diagnosis. Dementia is down by 12 per cent from last year, while intellectual disability clients have increased by 10 per cent and mental health clients have increased by 16 per cent.

Matters involving a person with an ABI (217) have increased slightly by 4 per cent over last year, while physical disability (149) is up 13 per cent by comparison with last year. A person with more than one diagnosis will likely need to access services across multiple service systems.

A person who needs to access services across multiple service systems will likely require more intensive involvement of their guardian to secure these services and may be subject to a guardianship order for a longer period.

Figure 7: Changing demographic of disability types (2018-19 to 2022-23)

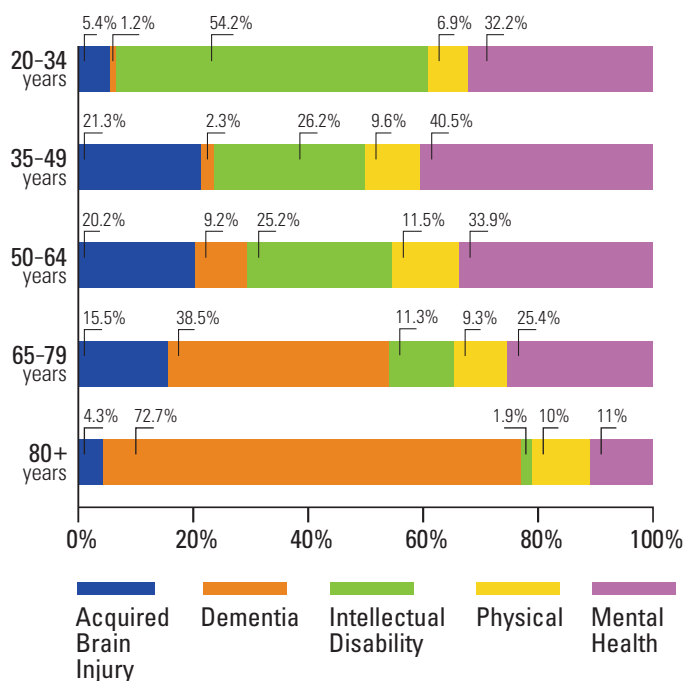


Clients’ age

The age of clients has also changed, with an increasing number of young people coming under guardianship. In the age range of 20 to 64, 468 or 77 per cent of clients presented with mental health issues.

A slightly lower number of 427 clients had intellectual disability, constituting a higher percentage of 86 per cent across the same three age ranges. Dementia was most dominant in the age groups from 65 to 80 plus at 84 per cent.

Figure 8: Disability breakdown by age (2022-23)



Guardianship issues

The need for a decision to be made about where someone will live is the most likely reason for a guardianship order. Service issues including NDIS remain high at 28.7 per cent, a continuing trend. Health and medical treatment issues are consistent with last year's percentages, though this category has declined markedly over time.

Table 12: Top five issues leading to a Guardianship Order (2022–23)

Issue Type	Total	%
Accommodation	827	52.8%
Service issues, inc. case management	256	16.3%
NDIS Issues	194	12.4%
Health and medical treatment	89	5.7%
Conflict – family	70	4.5%

Changing service system impacting on the role and functions of guardians

The transition to the NDIS has had significant impact on the process of accessing disability supports, including specialist disability accommodation. Access to NDIS funded support requires navigation of lengthy and often onerous application processes. There is often less certainty and stability for participants. The removal of individual case management as the foundation and coordination point for a person's service delivery has impacted individuals who are unable to navigate this complex system without significant support and advocacy. While NDIS support coordinators play this role to some extent, their role is more confined. This commonly results in guardians needing to take up a service coordination role that was previously outside their remit.

OPA's represented persons who are NDIS participants or eligible for NDIS services are commonly people whose support needs cross multiple service systems and who have experienced support system failures in the past, often referred to as 'people with complex support needs'. However, their needs are not inherently complex but may prove challenging for a care team trying to piece together an appropriate support package from multiple, often siloed, systems.

Overall, it is our experience that the NDIS has increased the amount of work that is required per guardianship matter and the length of orders because of how long it takes to put services in place and the effort involved in maintaining them.

This is reflected in the increased number of actions and decisions per matter that are required year on year. Often NDIS matters require a guardianship order to be in place for a longer period, which is at odds with the principles underlying the *Guardianship and Administration Act 2019*.

The complexity of matters this year presents an interesting story:

- guardianship orders increased 0.5 per cent over the previous year
- decisions decreased by 49 per cent compared to the preceding year
- yet there was 26 per cent increase in actions and documents during the year, which amounts to a 242 per cent increase over five years.

Table 13: Guardianship matters, decisions, and actions and documents

	2022-23	2021-22	2020-21
Guardianship Orders	977	972	964
Decision	1838	3596	4190
Actions and documents	355,916	281,202	257,890

The decrease in decisions is likely attributable in part to the NDIS constituting such a large portion of the matters. Factors such as the complexity of the service system that underpins it, the time needed to navigate it, and the time required to organise plans or seek reviews to get sufficient funds into the plan to meet the person's needs all play a part in delaying decisions.

It is common for a guardian to be faced with a multiple-person care team, from 5 to 20 people. This is because OPA's work often deals with people with multiple needs and for whom there is pent-up demand by the time they get to guardianship. Determining what decisions need to be made often involves consultations with the care team and the family. The more people involved in the process, the longer the process takes and the longer a person waits for a decision to be made.

Taylor's story

Taylor's life took an unexpected turn when, at age 18, she faced a family breakdown that made it unsafe for her to remain at home. As a result, Taylor experienced a period of homelessness. A difficult situation made more complicated by her disability, which significantly increased barriers to accessing housing and service supports.

OPA was appointed as guardian for Taylor and immediately started to work alongside her to rebuild her confidence and self-advocacy skills. Taylor's living situation improved significantly when she received NDIS Supported Independent Living (SIL) funding. With a well-crafted NDIS plan and support, she found a new home and stability.

This stability allowed Taylor to refocus on addressing medical issues. At the outset, Taylor and her guardian attended specialist medical appointments together to ensure Taylor understood the discussion and that her voice was at the forefront of every decision.

After several years of working alongside her guardian, Taylor started gaining confidence and making more minor medical decisions. From this beginning, Taylor's advocacy skills grew, and she started making her service decisions independently, gaining a sense of empowerment and control over her life.

Gradually she started making her own service decisions and began engaging in and initiating discussions with her care team, including allied health professionals and staff at her house. She expressed her views, wishes, and desires regarding all the services she received. When complex issues arose, Taylor continued to invite her guardian to meet with all parties involved, encouraging open communication and active participation from everyone.

Taylor's progress was evident at the most recent VCAT Hearing, and decision-making authority for medical decisions and access to services was returned to her.

Taylor's journey exemplifies the power of dedicated support and guidance in fostering independence. Taylor proves that with the right allies, determination and opportunities, anyone can overcome obstacles and embrace a life of self-determination and empowerment.

Names have been changed for privacy purposes.

**Coercive authority:
The use of Section 45 orders**

The *Guardianship and Administration Act 2019* continues to include a provision that allows guardians to request police, ambulance, or other service providers to provide assistance to enforce a decision. In such instances, an order from VCAT is required under s.45 of the Act. The principal use of such orders is to facilitate the transport to the hospital of a person who is unable to appreciate the need for treatment for reasons relating to their disability or mental health. This is the most restrictive action that a guardian can take, so OPA endeavours to use s.45 orders sparingly. The use of this action has markedly declined over recent years.

This year, 15 Section 45 orders were issued. However, in many cases this year, the powers were unnecessary as the guardian convinced the individual to attend the hospital or receive treatment.

Table 14: Section 45 orders (2022-23)

Number requiring ambulance attendance transport	6
Number requiring police attendance	8
Number requiring chemical restraint	5
Number of requiring physical restraint	2

Wait List

Guardianship orders received from VCAT are triaged and placed on a waitlist, where they are monitored and assessed against risk and need. The Intake Team handles these orders in a shared arrangement where urgent actions are given priority, but finding a balance between demand and available resources is challenging. The only decisions that intake advocate guardians will not make are those which are irrevocable, such as permanently placing a person in aged care. These decisions are reserved for when allocation occurs to an individual guardian.

This year the trend of recent years continued with high demand affecting the waitlist, which peaked in quarter four. This year there was a unique set of circumstances occurring, which included the high number of staff departures simultaneously because of the early retirement scheme and the time lag to replace so many staff, including almost all of those involved in program management. These changes made managing operational demands very difficult and affected the time to allocation.

Table 15: Average days to allocate a Guardianship Matter

Days to allocation	2022-23	2021-22	2020-21
Guardianship	69.13	63.77	23.97
Urgent guardianship	5.36	1.6	1.32
	74.49		

Guardianship in Hospitals Project

This was the third and final year of the project, funded by the Department of Health. It aimed to address health service concerns about timely decision-making and discharge planning for patients who have had a hearing at VCAT, resulting in the Public Advocate being appointed as guardian.

The initial pilot program, which ceased in 2019, was scoped to include:

- only metropolitan Public Hospitals
- people over 65 years of age
- people ready for discharge with **limited complex decisions** in a hospital at the time of the VCAT application.

However, when it transitioned to the Hospital Team Program in 2020, it had a significantly expanded scope, including:

- all Victorian Public Hospitals (including regional facilities)
- no limitation on age groups
- people ready for discharge with **limited complex decisions**
- people in a hospital at the time of VCAT application.

The original hospital clients presenting to OPA required an aged care assessment and accommodation decisions. These were relatively straightforward and usually only needed one or two decisions. However, this has changed so that guardians operating in the hospital sector have been impacted by the increased complexity and fragility of the service system and people presenting with multiple conditions, including mental health diagnoses. The more complex a person's situation, with the likelihood that numerous service systems will be involved, the more difficult it is for a guardian to make decisions. The table below shows the changes in hospital patients who require guardianship over time.

Table 16: Criteria change for Hospital Program

	2022-23	2021-22	2020-21
Orders	208	245	213
% Under 65	37.98%	29.80%	25.82%
% Diagnosed Mental Health	32.21%	24.49%	30.99%
% NDIS	34.62%	27.76%	23.47%

Many factors act as impediments to people under guardianship getting out of hospital:

- responsibility for necessary discharge functions, such as identifying and securing appropriate supports and accommodation, being divided between multiple parties, sometimes resulting in inadequate coordination and responsibility-taking
- the lack of access to appropriate accommodation post discharge
- delay in discharge planning due to wait times for services such as allied health, social work, or support coordinators
- documentation provided for hospital patients are sometimes deemed inadequate and insufficient for NDIS requirements
- delays in accessing NDIS services, such as behaviour support or occupational therapy, and restrictions on access to NDIS-funded allied health while in hospitals
- poor understanding of NDIS plan review meetings and report requirements for such meetings to assist with more rapid discharge
- underutilisation and lack of awareness of NDIS resources within hospitals such as:
 - Hospital Liaison Officer (NDIS)
 - NDIS Leads.

However, by the end of this year, there was a marked improvement in the NDIS response and its timeliness for people in hospital, which bodes well for future years.

The more complex a person's situation, the more difficult it is for a guardian to make decisions

Hospital Related factors that affect discharge time

Hospital-specific factors impact the time taken to discharge, including the level of understanding about guardianship or the variable provision of resources, experience and staffing across hospital networks.

This year the allocation time was generally consistent except for quarter three, which may be related to OPA's staffing transition due to early retirement package departures.

Table 17: Hospital guardian allocation

Quarter	Allocations	Average wait days
1st	63	55
2nd	51	51
3rd	55	66
4th	49	51
Full Year Total	218	55.8

The value of a dedicated team to support processes for discharge from hospital has been demonstrated through this program. Continuation of the program will help to get people out of hospital in a timely manner. Funding for this work remains short-term, with funding past the end of the 2022-23 financial year yet to be formally confirmed.

Hospital Stakeholder Engagement

There is an opportunity to improve the understanding of hospitals and health services of the appropriate use of guardianship through the engagement and training of hospital staff.

Regular meetings are 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.

The Hospital 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 guardianship and the role guardians play in discharge decisions.

There is also a monthly meeting between the Hospital Team and the NDIS Hospital Liaison Managers to facilitate better outcomes for patients under guardianship and escalate issues where appropriate.



Jyoti's story

Jyoti is a 42-year-old person with mental health concerns and cognitive disability. Because of the serious nature of their mental health condition, Jyoti has a long history of acute psychiatric hospital admissions, homelessness, and challenging behaviours.

Due to an inability to ascertain Jyoti's will and preferences, decisions were made to promote their personal and social wellbeing.

OPA was appointed as a guardian while Jyoti was in a Secure Extended Treatment Unit and immediately began to work with Jyoti's care team.

The care team and guardian worked collaboratively to prepare evidence and information for the NDIS and share information to help ensure Jyoti had all the required support to live a fulfilling life in the community.

Because of the meticulous planning and collaboration of the care team, Jyoti's transition from the hospital to the Supported Independent Living (SIL) was smooth and successful.

Jyoti has lived happily in supported accommodation and effectively managed their daily life for eight months. The SIL environment provides the necessary support and stability to prevent re-admissions to the hospital, marking a significant achievement in their ongoing journey to wellbeing.

The guardianship order was subsequently revoked.

This demonstrates the power of effective discharge planning and service coordination to establish sustainable services and wellbeing for people who rely on multiple services to lead a life in line with their choice in the community.

Names have been changed for privacy purposes.

Medical Decisions

There was a slight drop in the number of medical treatment matters compared to the previous year.

There were 36 requests for significant treatment decisions deemed emergency treatment, which is not considered significant treatment under the legislation.

There was a slight drop in the number of medical treatment matters compared to the previous year.

Table 18: Medical Decisions

Matters	2022-23	2021-22	2020-21
s.62	1	6	1
s.63	374	368	468
s.81	5	15	16
Extension of s.63 decisions	17	28	39
Total	397	417	524

Distribution of matters

The top five metropolitan health networks requesting medical treatment decisions were Alfred Health (43), Monash Health (41), Melbourne Health (32), Eastern Health (29), and Peninsula Health (21). There was a significant increase in applications made by Monash Health compared to the previous year. Otherwise, the numbers are similar to the last year.

The top five regional health networks were Bendigo Health (8), Barwon Health (5), Ballarat Health (5), and East Grampians (2). Each of the other nine regional health networks made one request. Overall, there was a slight reduction in requests from the regional networks.

Medical practitioners made the most requests (315); other requests came from dentists (34), nurses (14), ophthalmologists (5), and one physiotherapist.

Length of time to make decisions

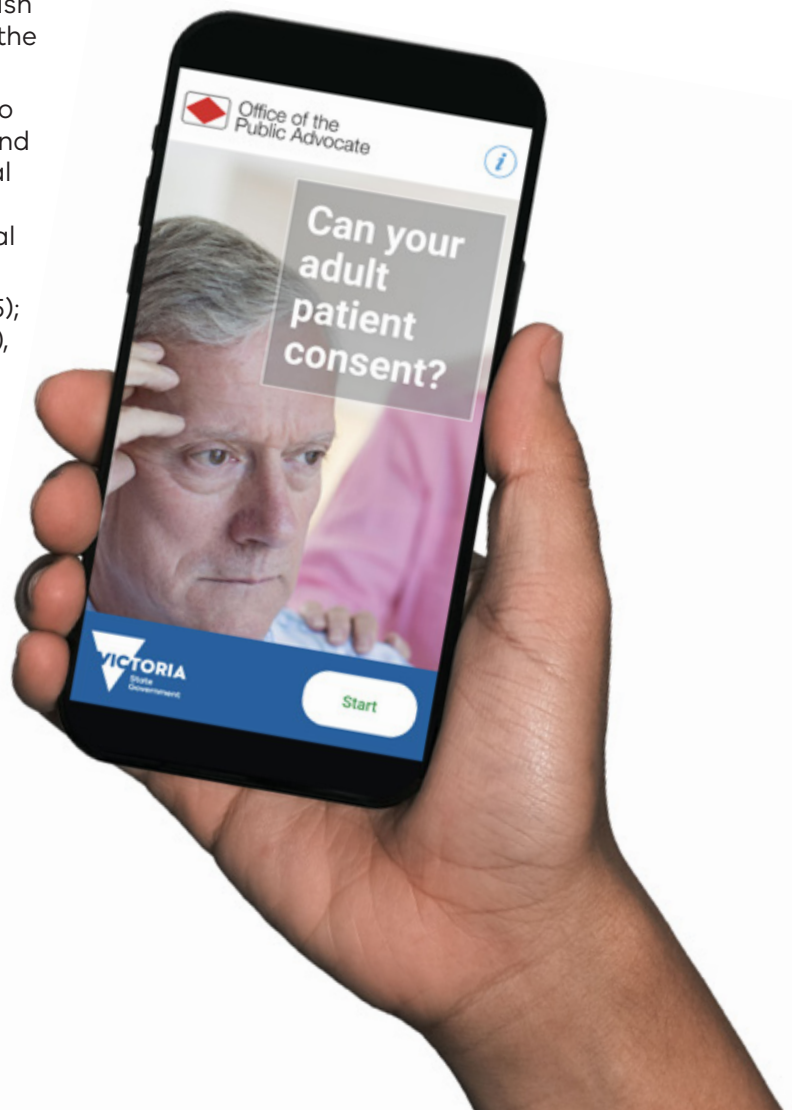
Almost half of the decisions (43 per cent) were made in one day, 23 per cent were made between two and five days, and 16 per cent were made after five days. This is consistent with previous years.

Use of restraints in healthcare settings

OPA's position is that no medical treatment decision-maker, including the Public Advocate, has the power to authorise the use of physical or other restraints to require compliance by a patient who resists proposed medical treatment.

The use of physical or chemical restraint to compel a person to receive medical treatment is not considered to be a medical treatment decision as it does not meet the definition of medical treatment as per the Medical Treatment Planning and Decisions Act.

If a person under guardianship orders does not consent to medical treatment, and restraint is required to be used in order to administer medication or a treatment, the appointed guardian must seek an order from VCAT under the *Guardianship and Administration Act 2019* to authorise the use of forcible physical restraints.



Adam's story

Adam is a 48-year-old man with a history of insulin-dependent diabetes mellitus and many years of mental health issues.

Adam had significant chronic leg wounds for which the recommended treatment was a below-knee leg amputation. Adam did not want to undergo this treatment and was using substances that were impacting on his wounds.

Adam's case manager made an application for the appointment of a guardian to make decisions about Adam's medical treatment, accommodation, and services. Even though his treating psychiatrist could have consented to the proposed medical procedure, it was considered less restrictive of Adam's human rights to have a guardian appointed with medical treatment powers to make a decision consistent with his will and preferences.

Clear medical evidence concerning Adam's decision-making capacity was difficult to obtain, and his treating health practitioners provided differing opinions on this. Adam did not want to have a guardian or administrator appointed. If one was to be appointed, he wanted his mother to be appointed.

A health practitioner from an acute hospital stated that a guardian with medical treatment power was required to consent to a unilateral below-knee amputation on behalf of Adam. This would likely involve forcing Adam to undergo the surgery, extensive post-operative treatment/weight bearing restrictions, and rehabilitation. The health practitioner referred to Adam as probably needing to be physically restrained for a prolonged period. This was considered to be a potential encroachment on his human rights.

At the hearing, an independent administrator was appointed for Adam and the application for the appointment of a guardian was dismissed.

Names have been changed for privacy purposes.

What you tell us

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.

Feedback and complaints

Responding to complaints and feedback allows OPA to review and improve its work.

Decisions can significantly impact a person's life, their family, and others involved. OPA understands that not everyone will agree with the way in which the work is done or how and why the decisions are made.

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).

In 2022-23, 81 per cent of matters were received online (via email or the OPA online complaints form). Only 18 per cent of matters were received by phone and one per cent by post. There were no in-person contacts.

OPA's waiting list for the appointment of a guardian or investigator may have contributed to the increase in complaints. This year 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 four last year) and accommodation issues (a 320 per cent increase from five last year to 21 this year). Several people also made multiple complaints regarding the same or similar issues.

To improve how 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.

There was an overall increase in formal complaints this year. The number of matters referred for informal resolution at the program level increased by 12.5 per cent (from 16 last year to 18 this year).

OPA received six requests seeking a review of a guardian's decision. Of these:

- two resulted in the complainants being satisfied once they had received a statement of reasons
- two decisions were reviewed, which resulted in the guardian's decision being sustained, and
- two requests had not been completed at the end of the financial year.

All complainants are informed of their right to have their complaint referred to the Victorian Ombudsman (the Ombudsman), an avenue for complainants who may need more clarification on the way in which OPA responded to their complaint. This year, the Ombudsman enquired about 13 cases, and in each of these cases, OPA was able to provide information or further explanation to address the enquiry. 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.

Charlie's story

Charlie worked hard and lived with a friend in a private rental property in the country. Unfortunately, in 2020 Charlie suffered from two debilitating health episodes. These episodes removed Charlie's ability to communicate verbally or move.

Charlie now required round-the-clock care and was admitted to the hospital for a year of rehabilitation.

Following this rehabilitation, Charlie hoped to return home but could not because of their care needs. Following two failed attempts to return home, Charlie's NDIS care team did not recommend they return home to the private rental, an option they deemed inappropriate.

Rather than live in the hospital even longer, Charlie reluctantly moved into residential aged care despite being a young person at 60 years old. Once there, Charlie remained stuck until the guardian from OPA became involved and advocated for their rights. Listening to Charlie's will and preference, the process of finding suitable accommodation outside of aged care began. With assistance from the OPA guardian, Charlie secured a sufficient NDIS package, enabling them to live in Supported Disability Accommodation in the community rather than aged care.

Now supported by a dedicated care team and a home tailored to their needs, Charlie can maximise independence, including choosing where to live.

Names have been changed for privacy purposes.

"It's been great working with you. It made things much easier for all involved in Charlie's care by having you on board. I look forward to the next participant we have in common!"

Sally

Charlie's Support Coordinator

"Amazing outcome. Thank you so much for all of your hard work and support. I hope you know that your efforts have made a HUGE difference in Charlie's life."

Emily

Community Engagement Manager at Charlie's new SDA

Appendices

Appendix A: Compliance disclosure

Decision-making and advocacy

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

- *Guardianship and Administration Act 1986*
- *Guardianship and Administration Act 2019*
- *Charter of Human Rights and Responsibilities Act 2006*
- *COVID-19 Omnibus (Emergency Measures) Act 2020*
- *Medical Treatment Planning and Decisions Act 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 Part III 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: External committees/advisory groups

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

- Australian Guardianship and Administration Council
- Balit Narrum
- Disability Act Review Advisory Group
- Eastern Community Legal Centre, Elder Abuse Strategic Advisory Group
- Elder Abuse Roundtable
- Ethnic Communities Council of Victoria Elder Abuse Advisory Group
- Flinders University project (Behaviour Support Plans and Supported Decision Making) Working Group
- Justice Connect Safeguarding Now, Preventing Future Abuse Project Steering Committee
- Law Institute of Victoria, Disability, Elder and Health Law Section Executive Committee
- Law Institute of Victoria, Elder Law Committee
- Private Congregate Care Alliance
- Project Steering Committee for the Integrated Model of Care for Responding to Suspected Elder Abuse
- Review of The Retirement Villages Act Stakeholder Reference Group
- Royal Children's Hospital, Community Advisory Committee
- Seniors Rights Victoria Advisory Committee
- Social Services Regulation Taskforce
- Supreme Court Funds in Court Human Rights Advisory Committee
- University of Melbourne Community Visitors and the NDIS Research Advisory Group
- Victoria Police, Disability Portfolio Reference Group
- Victoria Police, Mental Health Portfolio Reference Group
- Victoria Police, Seniors Portfolio Reference Group
- Victorian Electoral Access Advisory Group
- Victorian Public Service, Diversity and Inclusion Community of Practice
- Victorian Public Service Enablers Network.

Appendix C: Comparative workforce data 2022-23

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

Table 18: Paid employees as at 30 June 2023

OPA employees by gender and age			Employment status			
Gender	Total	Age Range	Ongoing	Fixed Term	Casual	Grand Total
Woman	102	25-34	0	0	-	25
Man	16	34-44	0	0	1	34
Self-described	3	45-54	10	7	1	34
		55-64	12	8.94	1	23
		65+	23	21	3	5
Grand Total	121		45	36.94	6	121

Table 19: Paid staff as at June 2023

OPA employees by VPS level and gender					Full Time Equivalent Employees			
Classification	Man	Woman	Self Described	Total	Man	Woman	Self Described	Total
VPS 2		8	1	9		7	1	8
VPS 3		12		12		8.94		8.94
VPS 4	7	14	1	22	7	14	0.6	21.6
VPS 5	9	60	1	70	8.6	54.51	1	64.11
VPS 6		5		5		5		5
Allied Health 3		1		1		1		1
COG 2a		1		1		1		1
Executive		1		1		1		1
Grand Total	16	102	3	121	15.6	92.45	2.6	110.65

Appendix D: Financial Report 2022-2023

Comprehensive Operating Statement	Note	2023 \$000's	2023 \$000's	2023 \$000's
Continuing Operations				
Income from transactions				
Output appropriations	1	15,013	14,959	12,252
Government Grants		3,679	3,578	3,242
Other Income	2	41		62
Total Income from transactions		18,692	18,537	15,556
Expenses from transactions				
Employee expenses	3	14,217	16,222	13,220
Depreciation and amortisation		68	82	83
Interest expense		5	8	9
Supplies and services		3,401	2,323	2,043
Total expenses from transaction		17,691	18,635	15,355
Net Result from transactions (Net operating balance)	4	1,002	-98	201
Other economic flows included in net result				
Other gain/ (loss) from other economic flows			2	1
Total other economic flows included in net result		-	2	1
Net Result		961	-96	202
Comprehensive result			-96	202

Notes to 2022-23 Annual Report

- Note 1.** The increase in output appropriation is due to additional funding for supporting and safeguarding Victorians with Disability (OPA) and Independent Third Party merged with CLCBC#2773 ongoing to meet the complexity of the disability environment including addressing growing waitlists for critical services as well as supporting people with a cognitive impairment in legal procedures.
- Note 2.** Central Adjustment- Transfer between funds.
- Note 3.** Salary cost savings after early retirement package offer in FY21-22, where termination benefits was supported by TA of \$2.3m to cover the termination payments. Subsequently, vacant positions are progressively filled since February, hence employee expenses are less in FY22-23 compared to last year.
- Note 4.** Surplus of \$1.002m achieved from cost savings and additional grants from other Departments including Healthy Discussion projects.

Office of the Public Advocate

Level 1, 204 Lygon Street
Carlton Victoria 3053

Ph: 1300 309 337

publicadvocate.vic.gov.au

TTY: 1300 305 612

Fax: 1300 787 510



Office of the Public Advocate

