



Office of the Public Advocate

Foundations for change

OPA's engagement with
Aboriginal people with disability

August 2024

Cover artwork

Gumarran (Yolgnu) **'Hidden Feelings', 2021, acrylic on canvas**

This work is an abstract and eclectic representation of the thoughts and expressions of our Ancestors faced with colonisation, ongoing disadvantage, suppression of culture, personal lack of faith in a system that puts money in front of nature and humanity, and a legal system that has no human element and no interest in addressing the underlying generational trauma, provides no assistance for healing or rehabilitation and has no interest other than to further traumatise our people through incarceration.

– Gumarran

Gumarran is a Yolgnu artist from the north-eastern Arnhem Land region of the Northern Territory. Gumarran belongs to the Dhuwa moiety, which is one of the two divisions that all Yolgnu plants, animals, places and people belong to, the other being the Yirritja moiety. Gumarran's paintings often incorporate flowing, expressive brushwork and a colour palette that takes inspiration from natural ochre colours.

This artwork was created through The Torch, a not-for-profit organisation that provides art, cultural and arts industry support to First Nations people currently in, or recently released, from Victorian prisons.



The Office of the Public Advocate (OPA) acknowledges Victoria's Aboriginal communities and their rich culture. OPA pays respect to their Ancestors, Elders and communities who are the custodians of the land on which we work.

Acknowledgements

In preparing this report and documenting OPA's next steps, OPA:

- closely consulted with the Public Advocate and OPA's First Peoples Engagement Lead
- consulted with individuals about included lived experience examples
- conducted a focus group involving Independent Third Person (ITP) Program volunteers
- conducted focus groups with OPA guardians.

Terminology

In this report OPA regularly uses the term 'clients' for ease of reading. However, OPA recognises that the term 'clients' can imply that people have chosen to work with us whereas the decision has been made to appoint the Public Advocate as their guardian.

OPA uses the terms 'Aboriginal people' and 'Aboriginal communities' throughout this report which is in line with the current Department of Justice and Community Safety (DJCS) style guide. Where a report or role uses the terms 'First Nations' or 'First Peoples', OPA uses that term. OPA's past Koori Inclusion Action Plans used the term 'Koori' which was in line with the DJCS style guide of the time. OPA acknowledges that some members of the community may identify with other names, such as the traditional names of their people, Aboriginal and Torres Strait Islander, or Indigenous Australian.

The intention is that work included within this report is inclusive of all people who identify as having Indigenous Australian heritage.

Content warning

Please be aware that the content and findings in this report may be distressing and confronting. Exercise mindfulness while reading, as it could cause emotional distress for Aboriginal readers.

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Message from the Public Advocate



In my role as Public Advocate, I am the guardian of last resort for adults with disability in Victoria and advocate for the human rights and interests of people with disability and mental illness.

I am also a proud Yuin woman.

The ongoing effects of colonisation mean Aboriginal people are too often familiar with violence, abuse, neglect and exploitation, both at the individual and structural levels. My office recognises that for Aboriginal people with disability, the very first step of engaging with services can be difficult, let alone finding culturally safe and inclusive services. This obstacle is one of many that cannot be separated from barriers arising from colonisation and the resulting dispossession, as well as the impacts of the Stolen Generations, intergenerational trauma and racism.

One representation of these experiences is the artwork on the cover of this report by Yolngu artist Gumarran, titled 'Hidden Feelings.' It is described as:

[A] representation of the thoughts and expressions of our Ancestors faced with colonisation, ongoing disadvantage, suppression of culture, personal lack of faith in a system that puts money in front of nature and humanity, and a legal system that has no human element and no interest in addressing the underlying generational trauma, provides no assistance for healing or rehabilitation and has no interest other than to further traumatise our people through incarceration.

OPA also acknowledges the opportunity and privilege we have to learn from Aboriginal people's strong connection to Country, family and culture. I have been moved by what Dr Miriam Rose Ungunmerr Baumann AM, Senior Australian of the Year for 2021, has shared about the concept of 'dadirri' from the Ngan'gikurunggurr and Ngen'giwumirri languages of the Aboriginal peoples of the Daly River region in Northern Territory.

Dr Ungunmerr Baumann has said of dadirri:

It is our most unique gift. It is perhaps the greatest gift we can give to our fellow Australians. In our language this quality is called dadirri. It is inner, deep listening and quiet, still awareness.

...The contemplative way of dadirri spreads over our whole life. It renews us and brings us peace. It makes us feel whole again...

In our Aboriginal way, we learnt to listen from our earliest days. We could not live good and useful lives unless we listened. This was the normal way for us to learn — not by asking questions. We learnt by watching and listening, waiting and then acting. Our people have passed on this way of listening for over 40,000 years...

...Our Aboriginal culture has taught us to be still and to wait. We do not try to hurry things up. We let them follow their natural course — like the seasons. We watch the moon in each of its phases. We wait for the rain to fill our rivers and water the thirsty earth...

When twilight comes, we prepare for the night. At dawn we rise with the sun.

...Our culture is different. We are asking our fellow Australians to take time to know us; to be still and to listen to us...*

Inspired by Dr Ungunmerr Baumann's words, my office has taken time to collect and reflect on data to better understand the experiences of Aboriginal people who OPA works with.

We aim to improve our service delivery for Aboriginal people and ensure OPA embraces changes in our practices when they are needed. This will build on steps OPA has taken as part of our Koori Inclusion Action Plans, including OPA's *Walk with Me, Talk with Me* practice guide.¹

The data in this report aligns with findings of the Disability Royal Commission in highlighting the over-representation of Aboriginal people with disability in child protection and criminal justice systems, high rates of institutionalisation, and economic exclusion.² It also points to the critical importance of access to appropriate housing for Aboriginal

people with disability. For example, as the Yoorrook Justice Commission has recognised, a home is a vital foundation for social and economic participation, good health, spiritual wellbeing and connection to Country and culture.³

For Aboriginal people with disability who my office works with, appropriate housing must go hand in hand with appropriate support services. OPA's data highlights for us how important it is that culturally safe advocacy services are available for Aboriginal people with disability.

In the 'Next steps' section of this report we outline how OPA will seek to strengthen our work — both in our own service delivery and through our systemic advocacy work.

Dr Colleen Pearce AM
Public Advocate

* 'Dadirri', Miriam Rose Foundation (Web Page) <<https://www.miriamrosefoundation.org.au/dadirri/>>.

About OPA

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

The Public Advocate's functions under the *Guardianship and Administration Act 2019* relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect and exploitation. To this end, OPA provides a range of critical services for people with cognitive disability and mental illness.

In this report, OPA has focused on its Advocate Guardianship Program and the Independent Third Person (ITP) Program. Data from these programs can inform OPA's future systemic advocacy work and service improvements.

Advocate Guardianship Program and Investigations Unit:

The Public Advocate is the guardian of last resort for Victorians. The Victorian Civil and Administrative Tribunal (VCAT) can appoint the Public Advocate as guardian for a person with disability. In making the orders, VCAT will have found that the person does not have decision-making capacity for the personal matter(s) set out in the order, and that there is no other less restrictive means by which the decision can be made. The Public Advocate delegates her powers to OPA guardians, which enables them to make decisions as per the terms of the orders. The guardians work within the Advocate Guardianship Program.

When VCAT receives an application for guardianship or administration, it can refer the application to the Public Advocate for investigation about whether an order is needed. The investigation officers work within the Investigations Unit.

Independent Third Person Program volunteers:

ITP volunteers attend police interviews for people with cognitive disability and mental illness to help ensure that they are not disadvantaged during the interview process. Corrections Independent Support Officers (CISOs) are experienced volunteer ITPs who provide assistance to prisoners with a diagnosed intellectual disability during disciplinary hearings at adult prisons in Victoria.

Community Visitor Program volunteers:

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability and mental illness. They monitor and report on the adequacy of services provided in the interests of residents and patients. They visit across 3 streams: disability services, supported residential services, and mental health services.

OPA's pledge

Reaffirming the rights of Aboriginal people with disability

OPA's vision is of a just and inclusive society that values, respects, protects and promotes the dignity and human rights of all people. Our mission is to uphold the rights and interests of people with disability and work to eliminate abuse, neglect and exploitation.

OPA acknowledges Victoria's Aboriginal communities and their rich culture. We pay our respect to their Ancestors, Elders and communities, who are the custodians of the land on which we work. OPA acknowledges the Aboriginal and Torres Strait Islander people with whom we work and for whom we provide a service.

OPA recognises the voices of Aboriginal people with disability have always been strong but have routinely been silenced and ignored. It is our responsibility to listen to them.

OPA commits to act in ways that recognise the importance of family and kinship networks for Aboriginal people. We acknowledge the impact of colonisation on family and kinship networks and the ongoing fragmentation brought about by this. In undertaking our roles as advocates and guardians, in our provision of advice and education and in the operation of our volunteer programs, we respect and protect kinship ties within Aboriginal communities. We commit to developing a better understanding of the diverse experiences, priorities and needs of Aboriginal people with disability, and their families and carers.

OPA commits to act in ways that recognise the importance of connection to Country for Aboriginal people and their continuing spiritual connection to land. We acknowledge the impact of colonisation and dispossession of land that has contributed to Aboriginal people experiencing disadvantage across all measures of wellbeing. Acknowledging that Aboriginal people with disability are uniquely marginalised in Australia,⁴ OPA commits to providing a welcoming, culturally responsive service that responds to the needs of Aboriginal people with disability, and their families and carers. The rights of Aboriginal people with disability are innately tied to their physical, cultural and spiritual wellbeing.⁵

We commit to developing relationships with Aboriginal controlled organisations with a view to making our services more responsive and sensitive to the needs of Aboriginal people.

This vision will be achieved through a plan of action.

Executive summary

In 2023, OPA's First Peoples Engagement Lead identified recurring themes in the experiences of Aboriginal people with disability who OPA works with. OPA has undertaken this report to better understand these experiences, with a particular focus on OPA's Advocate Guardianship Program. This report also includes the next steps for service improvements and OPA's systemic advocacy work.

OPA has prepared this report in light of the current reform environment which is being shaped by recent reports of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC), the National Disability Insurance Scheme (NDIS) Review and the Yoorrook Justice Commission.

Activities since 2015

Since 2015, OPA has:

- developed Koori Inclusion Action Plans to guide its actions
- provided training and awareness raising events for staff and volunteers
- developed the *Walk with me, Talk with Me* practice guide.

In 2022–23, OPA created 2 designated First Peoples engagement roles. This has had a significant impact on OPA's work by:

- establishing new practices, including a Yarning Circle and Community of Practice
- raising awareness
- undertaking engagement activities
- planning and implementing service improvements, including exploring diversion from guardianship through individual advocacy.

2022–23 service data

OPA analysed data from the 2022–23 financial year relating to:

- Aboriginal people represented by OPA guardians
- Aboriginal people whose application for the appointment of a guardian or administrator was referred by VCAT to OPA's Investigations Unit
- Aboriginal people who came into contact with OPA's ITP Program (ITP clients). (This was a small-scale preliminary analysis to assist OPA in identifying possible areas for future focus.)

Advocate Guardianship Program

The Public Advocate is the guardian of last resort under the *Guardianship and Administration Act 2019*. The Public Advocate delegates her powers and duties to guardians in the Advocate Guardianship Program, who are allocated to work with represented persons. In 2022–23, there were 46 Aboriginal people represented by OPA guardians. This is 5% of all people who had an OPA guardian, which is an overrepresentation as Aboriginal people comprise only 1% of the Victorian population.⁶

Demographic features and life circumstances

OPA data on the demographics and life circumstances of Aboriginal people represented by an OPA guardian in 2022–23 highlighted their high levels of disadvantage and marginalisation:

- 89% were NDIS participants (or were in the process of becoming a participant)
- 59% were located in regional or rural areas
- 59% had experienced mental illness
- at least:
 - 5 out of 46 people had experienced past trauma
 - 7 out of 46 had expressed mistrust of services
 - 22% had experienced drug or alcohol issues
 - 22% had experienced contact with the criminal justice system
 - 32% had experienced primary homelessness (sleeping rough or in impoverished dwellings)
 - 21% had been affected by family violence
 - 67% had experienced a lack of culturally appropriate housing options available to them
 - 60% were in need of strong advocacy support.

Over the study period, Aboriginal people were younger on average, compared to all people who had an OPA guardian. The percentage of Aboriginal people under 30 was 43% compared to 16% for all people who had an OPA guardian.

Of Aboriginal clients under 30:

- intellectual disability was the most common disability recorded
- at least 88% had experienced past involvement in their lives of child protection services.⁷

Forty-eight per cent of Aboriginal clients had experienced 3 or more guardianship orders.

Of guardianship orders, 96% included powers to make decisions about access to services and 85% about accommodation.

OPA had concerns about the futility of the guardianship order in just over 10% of matters. For at least 2 Aboriginal people or their close family member, the guardianship process had caused them trauma or distress.

Investigations

In 2022–23, OPA undertook 15 investigations for VCAT in relation to guardianship and administration applications about Aboriginal people. OPA Investigations Officers collect and provide information to VCAT. It is VCAT that decides whether a guardian or administrator is needed. Following OPA investigations, there were subsequently 5 guardianship orders made by VCAT.

Independent Third Person Program

ITP volunteers attend police interviews for people with cognitive disability and mental illness to help ensure that they are not disadvantaged during the interview process.

OPA's data shows that Aboriginal people are significantly overrepresented in the ITP Program. Additionally, when ITPs were present for matters before a Bail Justice, almost one third involved Aboriginal people, with 86% of those people being remanded by the Bail Justice.

Of the people supported by an ITP at police interviews in 2022–23, Aboriginal people comprised:

- 25% of alleged offenders
- 6% of victims
- 9% of witnesses.

▶ Advocate Guardianship Program

5% 

of all OPA guardianship clients in 2022–23 were Aboriginal people

32% 

had experienced primary homelessness (sleeping rough or in impoverished dwellings)

89%

of Aboriginal guardianship clients were NDIS participants (or were in the process of becoming a participant)

Aboriginal guardianship clients

were younger on average: 43% were under 30 years of age compared to 16% for all guardianship clients

22% 

had experienced contact with the criminal justice system

88% 

of Aboriginal guardianship clients under 30 years of age had experienced past involvement of child protection in their lives

21%

had been affected by family violence

▶ Independent Third Person Program

25% 

of the alleged offenders supported by an ITP in 2022–23 were Aboriginal people

Reflections on OPA data

Having reflected on OPA data and contemplated the Disability Royal Commission (DRC), the reports of the Yoorrook Justice Commission, the NDIS Review and other policy reports, 4 themes have surfaced. These are, the importance of culturally safe services, access to appropriate housing and supports, the high level of strong advocacy OPA needs to provide for Aboriginal people with disability, and the need for more options that help Aboriginal people avoid guardianship.

Many Aboriginal people with disability carry the heavy burden of trauma, poor mental health and wellbeing and/or past engagement with child protection. Well-resourced culturally safe services, systems and housing can form the basis of support that enables Aboriginal people with disability to bear that burden and experience improved wellbeing. OPA's data highlights the importance of access to appropriate housing for Aboriginal people with disability.

OPA recognises that it must provide culturally safe services, and that it has a vital role to play in advocating for equivalent systemic changes. The impact of systems that are not culturally safe has been highlighted by the Yoorrook Justice Commission and within OPA's work.

For OPA's Aboriginal clients, the stability promised by appropriate housing can rarely be achieved without an appropriate level of funding for support, and culturally safe services. However, many of OPA's Aboriginal clients' ability to access this has been impeded by significant barriers. OPA supports, in principle, the recommendations made by both the DRC and the NDIS Review in relation to housing and services for Aboriginal people with disability. This includes the establishment of an Aboriginal Disability Forum with the ability to direct funding to enable Aboriginal Community Controlled Organisations to develop their capacity to design and deliver disability specific support services.⁸

OPA identified at least 60% of Aboriginal guardianship clients in 2022–23 needed strong and persistent advocacy over an extended period to achieve their goals in complex circumstances.

Aboriginal people with disability have the right to make decisions about their own lives. If they require help to do so, they should be assisted through culturally safe advocacy and supported decision-making services.

OPA's data reflects the finding of the DRC that there is an overrepresentation of Aboriginal people under guardianship. OPA's data also shows that many Aboriginal clients are under guardianship for multiple years. OPA is striving to better understand the historical factors that compound this problematic overrepresentation and is looking at actions it can take to reduce the making or continuation of guardianship orders for Aboriginal people with disability.

Next steps

OPA's next steps are set out in an action plan in this report. OPA plans to:

- develop a position statement on issues impacting Aboriginal people with disability, to guide OPA's systemic advocacy work in 2024–28
- improve its service delivery by:
 - seeking to establish an advocacy program for Aboriginal clients, with the primary aim of diverting appropriate matters from guardianship to advocacy
 - implementing a cultural safety training program for OPA staff and volunteers
 - maintaining the recently established Community of Practice for OPA staff and volunteers, and Yarning Circle for guardians
 - improving its ability to identify Aboriginal clients and provide relevant information in its reports to VCAT
 - maintaining space and time for Yarn Up meetings of Aboriginal staff
 - maintaining designated roles at OPA at a range of VPS levels
 - seeking to be an employer of choice for Aboriginal people, including by:
 - recognising the expertise that Aboriginal employees bring
 - recognising the cultural load for Aboriginal employees
 - ensuring that Aboriginal engagement and collaborative partnerships are led by OPA's First Peoples engagement roles
 - providing appropriate support for the First Peoples engagement roles.

Why we need to be more responsive to Aboriginal people's needs

A broader reform environment, as well as learnings from OPA's own activities and service provision, has shaped OPA's reflections on improving service experiences and advocacy for Aboriginal people with disability.

Reform environment

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability or the Disability Royal Commission (DRC), the NDIS Review and the Yoorrook Justice Commission have made recommendations and findings relevant to this report. References to specific findings and recommendations are interspersed throughout this report where they provide additional context for OPA's data, or where they have helped inform OPA's next steps.

Disability Royal Commission

In April 2019, the Disability Royal Commission was established 'in response to community concern about widespread reports of violence against, and the neglect, abuse and exploitation of, people with disability.'⁹ OPA made 13 submissions and provided 2 reports to the DRC. The Public Advocate made 4 appearances before the DRC and participated in a roundtable about best practice models of guardianship.

In September 2023, the DRC released its final report. It includes 222 recommendations 'on how to improve laws, policies, structures and practices to ensure a more inclusive and just society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.'¹⁰

Volume 9 of the final DRC report is titled *First Nations people with disability* and in it the DRC recognises that 'Aboriginal people with disability are uniquely marginalised in Australia.'¹¹ It outlines 13 recommendations to address this marginalisation 'by elevating [Aboriginal people's] needs, aspirations and priorities in policy and programs.'¹²

NDIS Review

The Australian Government commissioned a review of the NDIS in late 2022. The final report of the NDIS Review was published in October 2023 and made 26 recommendations.¹³ The review 'look[ed] at the design, operations and sustainability of the NDIS' and 'ways to make the market and workforce more responsive, supportive and sustainable.'¹⁴

In its report, the NDIS Review considered the NDIS and Australia's disability support system and its impacts for Aboriginal people.

Yoorrook Justice Commission

The Yoorrook Justice Commission was established by the Victorian Government in May 2021. It is 'the first formal truth-telling process into historical and ongoing injustices experienced by First Nations peoples in Victoria since colonisation.'¹⁵ Yoorrook will establish an official record and develop a shared understanding of the impact of colonisation on First Nations peoples in Victoria and make recommendations.¹⁶

In August 2023, the Yoorrook Justice Commission released the *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*.¹⁷ It has also released issues papers, including in relation to housing and homelessness.¹⁸ In 2024, Yoorrook continues to invite submissions on other areas of focus.

Overview of OPA activities since 2015

OPA Koori Inclusion Action Plans

OPA developed its first Koori Inclusion Action Plan (KIAP) in 2015 and has since developed 2 subsequent plans. The plans were designed to have a wide-ranging influence on OPA's work to make its services more welcoming, responsive and sensitive to the needs of Aboriginal people in Victoria. Each plan is structured under the headings of community engagement and partnerships, data and service improvement, systemic Koori inclusion, and Koori employment and economic participation. These actions were driven by OPA's KIAP Committee.¹⁹

In relation to community engagement and partnerships, OPA:

- developed a memorandum of understanding with The Aboriginal Community Elders Services Inc.
- undertook a project with the Victorian Aboriginal Legal Service.²⁰

In relation to service improvements, OPA:

- prepared a short data report²¹
- provided training for staff and volunteers and held awareness raising events²²
- developed the *Walk with Me, Talk with Me* practice guide.

Walk with me, Talk with Me practice guide

The *Walk with Me, Talk with Me: A practice guide for OPA staff*²³ is intended for use by all OPA staff providing services to Aboriginal people and their communities in Victoria. It was developed to highlight Aboriginal history and provide guidance about how best to work in collaboration and partnership with Aboriginal communities in Victoria. A small group of OPA guardians managed the project with Aboriginal consultants engaged to review information, provide ideas and draft the guide. In line with the employment goals identified in OPA's Koori Inclusion Action Plans, the opportunity arose in 2022 for OPA to establish designated Aboriginal roles.



First Peoples engagement roles

In 2022–23, OPA created 2 designated First Peoples engagement roles in its Advocate Guardianship Program.²⁴ These are dual roles that combine operational guardianship responsibility and engagement related to improving Aboriginal service experience, stakeholder relationships and staff capability. The roles sit within regional teams of the Advocate Guardianship Program. The First Peoples Engagement Lead has been filled.²⁵ The engagement components relate to all OPA programs, and the Lead reports directly to Deputy Public Advocate.

At the time of publication, the First Peoples Engagement Officer role is vacant. When this second role is filled, OPA will have increased capacity to build on the work started by the First Peoples Engagement Lead.

Prior to the creation of the First Peoples engagement roles, OPA's engagement and service improvement work was undertaken through individual activities and projects. The designated engagement roles reflect OPA's commitment to ongoing engagement activities, service improvement initiatives and systemic advocacy activities.

To support the new roles and other Aboriginal staff, OPA established a 'Yarn Up' that is led by the Public Advocate and provides the opportunity for Aboriginal staff to come together in a safe space.

In their short time in the role, the First Peoples Engagement Lead has already had a significant impact on OPA's mission and has greatly assisted OPA staff in their work.

Engagement activities with external stakeholders

OPA's First Peoples Engagement Lead has:

- commenced working with the VCAT Koori Support Team to establish a notification process²⁶
- established connections with the State Trustees Aboriginal Engagement Officer and Victoria Police Aboriginal Community Liaison Officers
- been involved in the Balit Narrum network²⁷ and the Aboriginal Justice Caucus, including attending Aboriginal Justice Forum quarterly meetings
- established connections with the Independent Mental Health Advocacy of Victoria Legal Aid
- attended the 2023 Overcoming Indigenous Family Violence Forum²⁸
- increased awareness of OPA and its work by:
 - engaging with Aboriginal Community Controlled Organisations (ACCOs) and Aboriginal support services — including legal and family violence services, the Aboriginal Advancement League, The Aboriginal Community Elders Services Inc. and the First Peoples Disability Network
 - attending Aboriginal community events, gatherings and conferences.



Establishing new practices

OPA's First Peoples Engagement Lead has established:

- a Yarning Circle for OPA guardians. The Yarning Circle provides a safe space for guardians to discuss issues impacting Aboriginal people they work with, and to share information and strategies to assist people in accessing culturally safe services
- an internal Community of Practice for OPA staff to consider:
 - systemic issues impacting Aboriginal clients, for example access to health, mental health, aged care and disability services
 - opportunities for service improvement at OPA.

Raising awareness within OPA

OPA's First Peoples Engagement Lead has led events for staff including:

- an event to commemorate Sorry Day in which an Elder who is a member of the Stolen Generations shared their story, with profound impact on staff²⁹
- an event for Wear It Pink Day to remember Auntie Tanya Day.³⁰

Implementing OPA service improvements

OPA's First Peoples Engagement Lead has identified and is guiding service improvements, including:

- a notification system from OPA's Intake Team to the First Peoples Engagement Lead when OPA receives a guardianship order for an Aboriginal person
- guidance consultations with OPA staff, including about culturally appropriate referrals
- accessibility consultations to improve OPA programs and projects
- identification of staff training needs and opportunities
- trialling an approach for individual advocacy for Aboriginal people to divert appropriate matters from guardianship.

Collaborating with Systemic Advocacy Unit

The First Peoples Engagement Lead's work has also shown a collective picture of concerning themes in the experiences of OPA's Aboriginal clients. The First Peoples Engagement Lead has worked closely with OPA's Systemic Advocacy Unit to raise these issues, one outcome of which has been this report.

In 2023, OPA's First Peoples Engagement Lead identified recurring themes in the experiences of Aboriginal people represented by OPA guardians, for example Aboriginal people with disability transitioning from child protection to adult guardianship.

Seeking to know more detail about these experiences, the Public Advocate requested an internal project to analyse recent OPA data and reflect on:

- what it reveals about the experiences of Aboriginal people OPA works with
- how OPA's data, alongside recommendations of the Disability Royal Commission, NDIS Review and Yoorrook Justice Commission, can inform both service improvements at OPA and OPA's systemic advocacy work.

In undertaking this report, OPA has identified areas for future investigation: a more in-depth analysis of ITP Program data and an analysis of data relating to the experiences of OPA's Aboriginal clients in the health system.

OPA's engagement with Aboriginal people in 2022–23

OPA analysed data from the 2022–23 financial year relating to Aboriginal people:

- represented by OPA guardians (Advocate Guardianship Program data)
- whose application for the appointment of a guardian or administrator was referred by VCAT to OPA's Investigations Unit
- who were clients of OPA's ITP Program.

This report focuses predominantly on data relating to OPA's Advocate Guardianship Program because in both the explanation of its findings and the recommendations themselves, the DRC illuminated the negative impacts that guardianship can have for Aboriginal people. OPA wants to improve its understanding of Aboriginal people with disability and their experience of guardianship and seeks to learn more about this through analysing the significant amount of data obtained during guardianship matters.

Guardianship clients

OPA undertook case reviews of matters from 2022–23 where Aboriginal people had been represented by OPA guardians. OPA analysed data relating to demographic factors, life circumstances and guardianship. Through this, OPA has identified common themes and issues. Taken together, data on Aboriginal clients' demographic and life circumstances indicate high levels of disadvantage and marginalisation.

Overrepresentation in guardianship

Forty-six Aboriginal people were represented by OPA guardians in 2022–23.³¹ This means that in 2022–23 the Public Advocate was given power (within a guardianship order made by VCAT) to make specific decisions for 46 Aboriginal people, which was 5% of all OPA guardianship matters.

This means that Aboriginal people were overrepresented in the OPA Advocate Guardianship Program, as according to the Australian Bureau of Statistics, in the 2021 Census, 1% of the population (66,000 people) identified as Aboriginal and/or Torres Strait Islander in Victoria.³²

This is an increase when compared to previous OPA data. In 2018–19, Aboriginal people were 2% of all people represented by an OPA guardian.

The tables and graphs in this section capture data relating to the 46 Aboriginal people who were represented by OPA guardians in 2022–23.

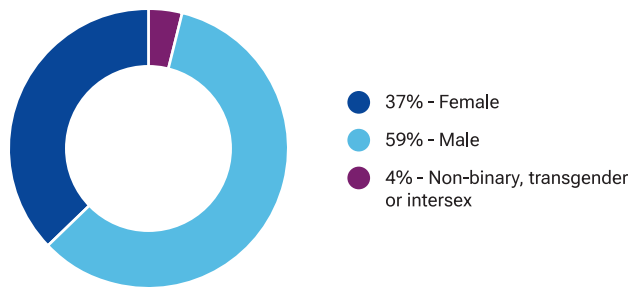
Gender

Table 1 and graph 1 illustrate the gender breakdowns for Aboriginal clients, showing that males were slightly overrepresented in this client group.

Table 1: Gender

Gender	Number of people
Female	17
Male	27
Non-binary, transgender, intersex	2
Total number of clients	46

Graph 1: Gender (%)



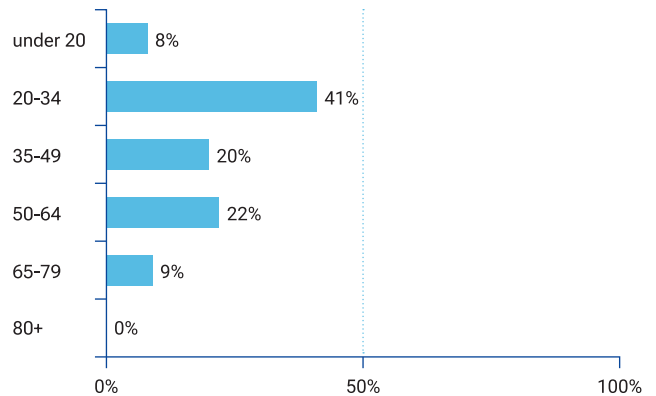
Age

Aboriginal clients were younger when compared to all people who had an OPA guardian. Table 2 and graph 2 illustrate age ranges in numbers and percentages and provide comparisons.

Table 2: Age range of Aboriginal clients

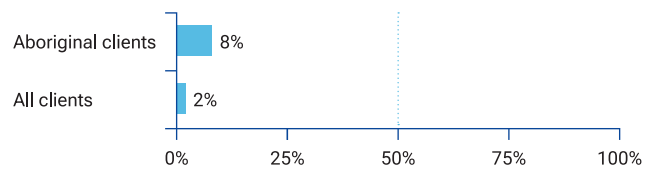
Age	Number of people
<20	4
20-34	19
35-49	9
50-64	10
65-79	4
80+	0
Total number of clients	46

Graph 2: Age range of Aboriginal clients (%)



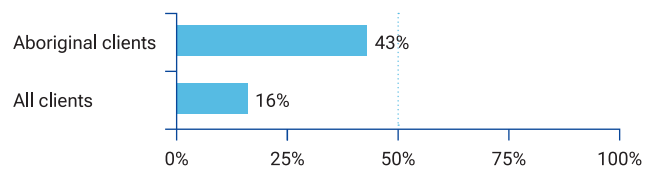
Graph 3: Comparison of clients under 20 years of age (%)

The percentage of Aboriginal clients under 20 was over 8%. In comparison, only 2% of all people represented by OPA guardians were under 20 in 2022–23.



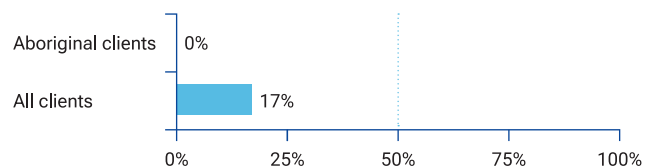
Graph 4: Comparison of clients 30 years of age or under (%)

The percentage of Aboriginal clients under 30 was 43%, compared to 16% for all people represented by an OPA guardian.



Graph 5: Comparison of clients 80 years of age or over (%)

In 2022–23, OPA guardians did not represent any Aboriginal clients aged 80 years or over. In comparison, 17% of all guardianship clients were aged 80 years of age or over.

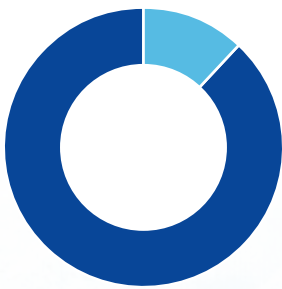


Past child protection involvement

In the cohort studied, there were 17 Aboriginal clients under 25. This was 29% of all Aboriginal people represented by an OPA guardian. Of these 17 young Aboriginal adults, at least 15 had experienced child protection involvement in their lives.

Applications to VCAT for guardianship orders included at least 5 made by Child Protection, and a small number of applications (at least 2) made by ACCOs.

Graph 6: Young adults with past involvement of Child Protection in their lives



88%

Aboriginal guardianship clients under 25 who have known past involvement of Child Protection in their lives

Location

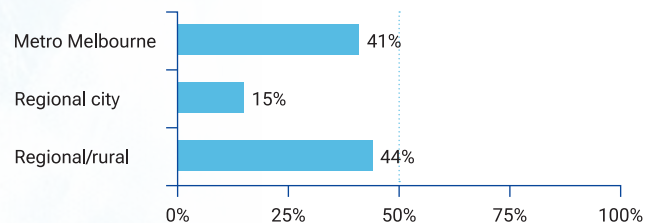
Table 3 sets out the location of Aboriginal clients based on divisions and areas used by the Department of Families, Fairness and Housing.

Table 3: Location of Aboriginal people

Metro Melbourne areas	Number of people
North division areas – Hume Merri-bek and North Eastern Melbourne	6
West division areas - Western Melbourne and Brimbank Melton	2
East division areas – Outer Eastern Melbourne and Inner Eastern Melbourne	2
South division areas – Southern Melbourne and Bayside Peninsula	9
Regional/rural areas	
North division areas – Mallee and Loddon	9
West division areas – Wimmera South West, Barwon and Central Highlands	10
East division areas – Ovens Murray and Goulburn	3
South division areas – Outer Gippsland and Inner Gippsland	4
Interstate (regional/rural)	1
Total number of clients	46

Graph 7 shows the percentages of Aboriginal clients located in the major city of metropolitan Melbourne, in a regional city of over 100,000 people (Geelong, Bendigo or Ballarat) and in a rural or regional area outside one of these cities.

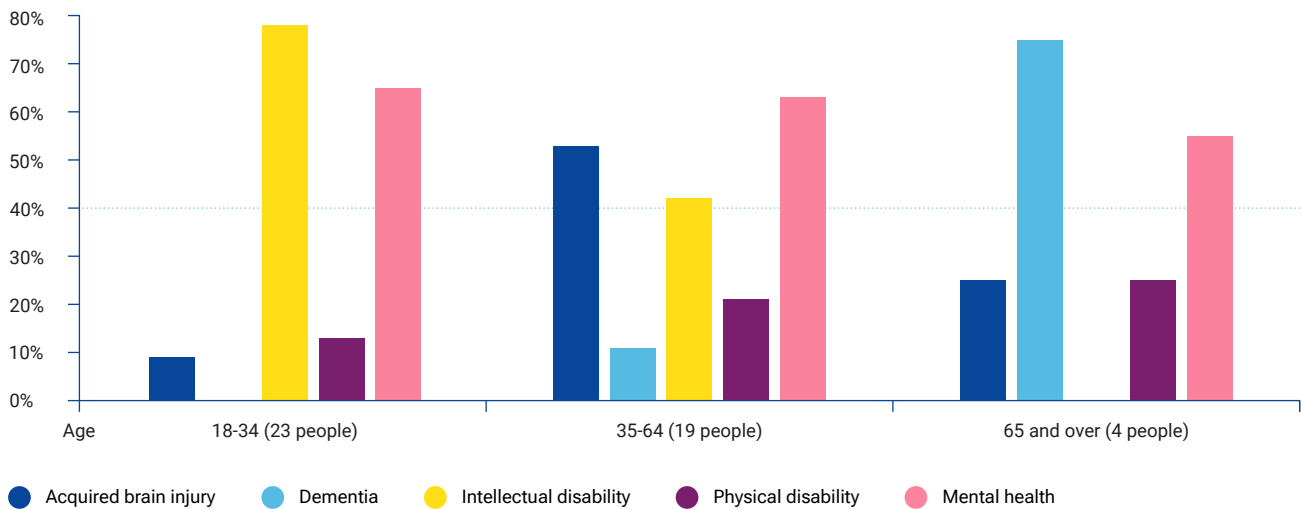
Graph 7: Comparison of where Aboriginal clients are located (%)



Types of disability

Graph 8 illustrates the types of disability for Aboriginal clients, broken down by age. A significant number of people had at least 2 types of disability.

Graph 8: Disability type by age for Aboriginal clients



Mental health and wellbeing needs

This section includes mental health and wellbeing data that can be confronting and disturbing.

OPA's data shows that many Aboriginal guardianship clients have a psychosocial disability or experience of mental illness. Of the 46 people, 59% currently have, or in the past have experienced, mental illness. This includes 39% who had been diagnosed with schizophrenia or schizoaffective disorder.

The types of life experiences included in the data are not always noted on the file, therefore these percentages are likely to be underestimates.

Self-harm and suicidal ideation

Eleven per cent of Aboriginal clients had experienced suicidal ideation, a past suicide attempt, or self-harm.

Trauma

Past trauma impacted at least 5 out of 46 Aboriginal clients. The 5 clients were between 20 and 34 years of age. This was 22% of people in this age bracket.

Drug or alcohol issues

Drug and alcohol issues affected 22% of the 46 Aboriginal guardianship clients. This includes 32% of Aboriginal clients between 20 and 34 years of age.

Mistrust of services

Mistrust of services was noted by OPA guardians as an issue for at least 7 Aboriginal clients. This included clients being unwilling to engage with services and/or OPA.

Experiences of family violence or other violence

At least 35% of Aboriginal clients had been affected by some form of violence or sexual assault. This includes 63% of adults aged 20 to 34 years. Family violence affected at least 21% of Aboriginal guardianship clients.

Contact with the criminal justice system

Twenty-two per cent of Aboriginal clients had experienced contact with the criminal justice system, including 13% who had experienced imprisonment.

NDIS participants

In 2022–23, 89% of all Aboriginal guardianship clients were NDIS participants (or in the process of becoming a participant). This is 41 of 46 people and reflects that Aboriginal clients are a younger cohort when compared to all people who are represented by an OPA guardian. Age being one of the criteria for the NDIS, it is worth noting that in 2022–23, only 4 Aboriginal people represented by an OPA guardian were 65 years of age or older.

Graph 9: Aboriginal clients who are NDIS participants (%)



Housing issues

Aboriginal clients were impacted by a range of housing issues, including experience of homelessness, insecure housing and lack of culturally appropriate housing options.

Table 4 sets out the number of Aboriginal clients who had experienced a range of housing-related issues. This includes experiences prior to 2022–23.

At least 67% of Aboriginal clients have experienced a lack of culturally appropriate housing options. Lack of culturally appropriate housing options means that Aboriginal people are denied the opportunity to live on Country or close to important family members. This is a particularly acute issue for clients living in regional and rural areas of Victoria.

At least 32% of Aboriginal clients have experienced primary homelessness (i.e. sleeping rough or in impoverished dwellings), while 28% experienced secondary homelessness (i.e. frequently moving from one temporary dwelling to another).

Insecurity of tenure was an issue experienced by at least 6 of 46 Aboriginal clients. Reasons for this insecurity include damage to the property by another person or by the represented person, which may have been attributable to behaviours of concern relating to their cognitive disability. This insecurity related, in some instances, to public housing. Five out of 46 Aboriginal guardianship clients lived in public housing.

Figures in table 4 highlight that access to culturally appropriate housing is missing for the majority of Aboriginal guardianship clients.

OPA has observed that when culturally appropriate housing is unavailable and NDIS services are inadequate the impacts can be damaging. OPA has seen that for some Aboriginal people with disability, who also carry the heavy burden

of mental health issues, lack of appropriate housing can heighten their risk of engagement with the criminal justice system.

Table 4: Housing issues experienced by Aboriginal clients

Housing issue	Number of people
Primary homelessness	15
Secondary homelessness and/or housing insecurity	13
Insecure housing	6
Lack of culturally appropriate housing options	31
Delay in discharge from hospital due to lack of appropriate housing	16

Please note that some clients fall into multiple of the above categories

For Aboriginal guardianship clients, appropriate housing needs to go hand in hand with appropriate support services.

OPA holds the position that people with disability should be supported and resourced to flourish and lead a dignified life. Access to culturally appropriate housing and services is a crucial foundation for this to be possible.

Accommodation data relevant to the Community Visitors Program

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability or mental illness. OPA collects data about the site visits, rather than about individuals in the accommodation facilities, so this report does not include client data from that program.

However, to assist OPA in thinking about the experiences of Aboriginal people who come into contact with the Community Visitors Program, OPA has documented the extent to which Aboriginal guardianship clients:

- have resided in accommodation that Community Visitors can visit
- are likely to reside in accommodation that Community Visitors can visit, for example due to experience of mental illness and compulsory treatment.

Table 5: Possible contact with the Community Visitors Program

Program stream	Number of people
Disability	14
Mental health	11
Supported residential services	9

Please note that some clients fall into multiple of the above categories

Experiences of guardianship and advocacy

Number of guardianship orders experienced

OPA looked back to identify if Aboriginal guardianship clients in 2022–23 had previously experienced guardianship.

VCAT generally makes guardianship orders time-limited to one year. After which VCAT will reassess the order, usually at a hearing, to determine whether there continues to be a need for the appointment of a guardian. A person who has had multiple guardianship orders will often have experienced multiple years under guardianship.

Increasingly, OPA is seeking to reduce the time a person experiences guardianship, and in recent years has further enhanced its ability to seek early revocation of orders when possible. In 2022, some guardianship teams trialled using guardianship support officers to prepare reports to VCAT requesting early revocation of orders when no further decisions were required. In 2023, this approach was implemented across the whole Advocate Guardianship Program.

There are many possible reasons for the continuation of a guardianship order when the initial order has reached its end date. Particularly when the person is younger, there are often ongoing decisions required. Less restrictive means of resolving issues do not always materialise during the first period of guardianship. People experiencing complex social problems may require decision-making for longer. It can take significant effort to bring together and maintain a support network equipped to support a person in making decisions when they arise.

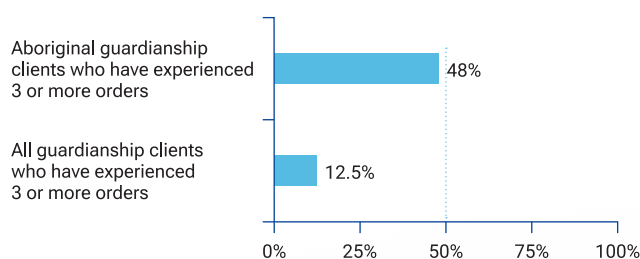
The decision to continue an order is made by VCAT, and there are many factors that contribute to the outcome. To make their decision, VCAT members consider all the information available at the time of the hearing, which includes the person's views, the guardian's report, and any information provided before or during the hearing from other people involved. VCAT will not always reach the same conclusion as the guardian about whether a person continues to need guardianship. At times, despite OPA presenting a view that the legislative requirements for making an order are not met, service providers, family members and others involved will argue that there is a need for a guardian and VCAT will make new orders. Guardians have reported this is more likely when the person experiences a high degree of risk.

Table 6 illustrates how many of the Aboriginal guardianship clients in 2022–23 had been under one or more orders. Graph 10 provides a comparison with the percentage of all guardianship clients with experience of 3 or more orders.

Table 6: Number of guardianship orders experienced by Aboriginal clients

Number of orders	Number of people
1 order	16
2 orders	8
3 orders	14
4 orders	4
5 orders	1
6 orders	0
7 orders	0
8 orders	0
9 orders	2
10 orders	1
Total number of clients	46

Graph 10: Comparison: Experience of 3 or more guardianship orders (%)



Advocacy matters

OPA's First Peoples Engagement Lead is trialling an approach that enables OPA to undertake individual advocacy matters for Aboriginal people. This is a small-scale trial because it is being undertaken without dedicated funding. The advocacy has been conducted by the First Peoples Engagement Lead and other OPA guardians.

Consent was gained to include the following 2 lived experience examples. Names and some details have been changed to protect privacy.

The following illustrates the impact that advocacy can have for a person.

Lived experience

Colin is culturally connected to his community through his artwork. Colin was distressed when police transported him to a mental health facility against his will. This occurred when he was feeling vulnerable following a recent experience of family trauma.

OPA provided short-term advocacy when the family had difficulty getting information from the hospital.

The First Peoples Engagement Lead, who is an Aboriginal person:

- liaised with Colin and his family
- found out Colin's views about his circumstances
- explained possible advocacy actions, and got their views on these actions
- requested the involvement of the Community Visitors to visit the mental health facility and meet with Colin
- connected Colin to a mental health lawyer from a culturally safe legal service
- attended Mental Health Tribunal hearings and shared information about:
 - grief and trauma presentations for an Aboriginal person
 - the importance of talk therapy and culturally based supports provided by an Aboriginal health service and
 - the value of having Aboriginal mental health workers involved.

The Mental Health Tribunal made a shorter order than had been sought in the application, with recommendations that Colin engage with Aboriginal services. The First Peoples Engagement Lead provided these referrals. Colin is now fully engaged with the NDIS, has returned to Country and has reconnected with his family and community.

The following illustrates both that guardianship can be a pathway to advocacy support, and that guardianship can have significant negative impacts for Aboriginal people with disability in some circumstances.

Lived experience

Cynthia is an amazing cook and a strong self-advocate. Her experience of being under a guardianship order had a significant detrimental impact on her. It contributed to others (including but not limited to the Children's Court and Child Protection) assuming that if she required a guardian to make some decisions, she was less able to make decisions in relation to parenting her children.

As the guardian became familiar with Cynthia, they became increasingly convinced that Cynthia was able to make her own decisions. On this basis, the guardian sought to have the order revoked early, and VCAT followed this recommendation. At the same time, OPA recognised that Cynthia needed assistance to access appropriate services and provided this advocacy.

In this matter it is highly concerning that assumptions were made about Cynthia's parenting ability on the basis of her being under guardianship.

In appropriate circumstances, individual advocacy can be effective in diverting matters from guardianship.

OPA reflection

OPA committed to undertaking individual advocacy for an Aboriginal person who had experienced multiple guardianship orders.

OPA was concerned that without this advocacy there would not be a clear pathway for the person to transition out of guardianship.

Within its limited capacity for advocacy, OPA has committed to prioritising advocating for Aboriginal people. OPA was able to explain to VCAT that OPA advocacy would be provided as a less restrictive alternative to guardianship.

At the reassessment hearing, VCAT did not make a subsequent guardianship order. OPA Advocacy has been provided as needed for the person.

Reflections of OPA guardians

As part of their role, OPA guardians undertake significant advocacy work. They are required to do so, as section 41(1)(b) of the *Guardianship and Administration Act 2019* sets out that it is a duty of guardians to act as an advocate for the person for whom they are guardian.

OPA has identified that at least 60% of Aboriginal guardianship clients in 2022–23 needed strong and sustained advocacy, predominantly because of challenges and barriers in accessing appropriate housing and/or support services.

OPA held a Yarning Circle with guardians in which they reflected on issues impacting Aboriginal people with disability they work with.

The following reflections provide an insight into systemic issues impacting OPA's Aboriginal clients which have required strong and sustained advocacy by OPA guardians to effect positive change.

Guardians shared:

- It is frustrating to see the significant barriers faced by Aboriginal guardianship clients trying to access adequate levels of support services.
- Agencies, in particular the NDIS, are failing to take into account people's cultural needs and circumstances.
- There are huge issues with accessing appropriate levels of NDIS funding: we are seeing base level one-to-three support when one-to-one support is needed.
- We are witnessing Aboriginal people unnecessarily transitioning from child protection into adult guardianship. There are missed opportunities for Child Protection to ensure young Aboriginal people with disability get the opportunity to build their capacity to make decisions.
- There is no reason for Aboriginal people with disability to be transitioning from child protection to adult guardianship at the rate we are seeing.
- Supported Independent Living (SIL) accommodation is so often culturally inappropriate and restrictive for Aboriginal people who want the freedom to be able to return to Country, and to visit important family members and community.
- There is a need for culturally safe SIL properties.

- It is very difficult to access culturally appropriate housing options.
- There is a lack of accommodation options on Country.
- We see criminalisation of behaviour that looks discriminatory. We see alcohol use criminalised in circumstances that can leave us wondering if the experience would have been the same for a person who is not Aboriginal.
- There are barriers to engaging appropriate mental health services.
- The mental health system can give up on people too quickly. This can lead to highly restrictive living environments for a person. Instead, if there are culturally appropriate mental health services, these can make all the difference in a person's life. This is an area where strong advocacy is so important. It may be less that the person needs an OPA guardian, and more that they need the strong advocacy support of OPA.
- For clients with complex circumstances we see barriers to them accessing ACCO services. We need ACCOs to be able to step more into this space and to increase their disability expertise.

Reflections on advocating together

One OPA guardian reflected on their experience of advocating together with a family member of their client. OPA asked the family member for their thoughts about their experience of working with the OPA guardian and if they were happy to share these thoughts.

The OPA guardian reflected that that the family member is 'an impressive advocate and constant' in the person's life and that 'it is a powerful story from tragic beginnings to a reasonably stable and supportive care team.'

The family member reflected:

It was good having the OPA guardian there if there was something major. They were there to call on with the authority of being an OPA guardian. I would like to have a guardian who's looking out for him. It really worries me. How can he make decisions about really important things? It shouldn't be a matter if a person is Aboriginal, or black or white or purple: if they need a guardian, they need a guardian.

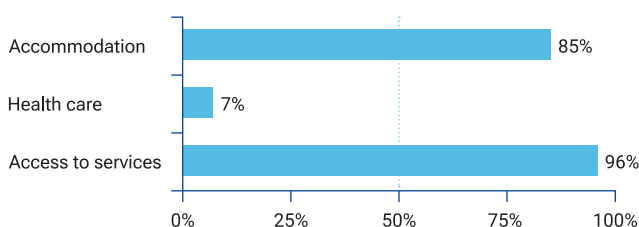
Terms of the guardianship order

A guardianship order sets out the personal matters about which the guardian has power to make decisions. These powers are determined at a VCAT hearing after considering what personal matters require decision at that time and determining that there is no less restrictive way for the decision to be made. One or more personal matters can be specified.

Graph 11 illustrates the percentage of Aboriginal clients for whom the terms of the order gave power to their guardian to make decisions about:

- accommodation
- healthcare
- access to services.

Graph 11: Powers of the guardian under the order (%)



Futility of the order

OPA guardians noted concerns about the futility of an order for 5 of the 46 Aboriginal guardianship clients. The common theme in these circumstances was that the guardianship order had been sought in part, or entirely, with the hope that the guardian's decisions would result in complex behaviours being controlled. An example is where support teams are already in place for the person, and the involvement of a guardian is sought to control the behaviour of an individual by making restrictive decisions, despite this carrying risk of trauma to the person.

Guardianship legislation requires guardians to make decisions in line with the person's will and preference. Guardians can only override the will and preference of the person if making a decision based on the person's will and preference would cause them serious harm. It can be futile for a guardian to make a decision overriding a person's will and preference if the person, regardless of any decision of a guardian, will act on their own wishes.

Trauma or distress associated with the order

For 2 clients guardians noted that the guardianship process caused trauma or distress to the client or a close family member. This included an instance where a family member compared guardianship with the lack of autonomy associated with the Stolen Generations. OPA notes that according to the Victorian Community Controlled Health Organisation's *Balit Durn Durn* report, over 47% of Aboriginal people have a relative who was forcibly removed due to Stolen Generations policies in Victoria.³³

Administration orders

An administration order is when an administrator is appointed with power to make decisions in relation to a person's financial matters. Of the 46 Aboriginal guardianship clients, OPA is aware that at least 43 (93%) have experienced being under an administration order. This highlights that for almost all of the 46 Aboriginal people who had experienced a guardianship order (or multiple orders) their decision-making autonomy was also impacted by administration orders.

Investigations

VCAT can refer a guardianship or administration application to the Public Advocate for investigation to determine if an order is needed. This helps ensure that substitute decision-makers are only appointed when that is the least restrictive option available. In 2022–23, 15 of the 314 matters referred by VCAT for investigation were for Aboriginal people.

A total of 5 guardianship orders were made by VCAT following the 15 investigations (2 orders were made in 2022–23 and 3 were made in 2023–24).

During 2022–23, a guardianship order appointing the Public Advocate was made in 2 instances following an OPA investigation that was also undertaken in 2022–23. This means that 2 people who came into contact with the OPA Investigations Unit in 2022–23 were also represented by OPA guardians in 2022–23.

Independent Third Person Program

Independent Third Person (ITP) volunteers attend police interviews for people with cognitive disability and mental illness to help ensure that they are not disadvantaged during the interview process and to ensure they understand and can exercise their rights. Victoria Police are responsible for engaging an ITP.

OPA is aware of one ITP volunteer who is an Aboriginal person. OPA recognises that many Aboriginal people face competing demands on their time and dedicate significant unpaid hours in contributing to their communities. Taking on an ITP volunteer role is a significant undertaking. Even though OPA understands this tension, increasing the number of Aboriginal ITP volunteers would be very valuable and OPA seeks to do this.

Overrepresentation in the Independent Third Person Program

Aboriginal people are significantly overrepresented in the ITP Program. Of all alleged offenders supported by an ITP in 2022–23, 25% were Aboriginal people. For victims and witnesses, the rate was 6% and 9% respectively.

Disciplinary hearings in prison settings

Corrections Independent Support Officers (CISOs) are experienced volunteer ITPs who provide assistance to prisoners with a diagnosed intellectual disability during disciplinary hearings at adult prisons in Victoria. Prisons are responsible for engaging a CISO.

In 2022–23, CISOs attended 67 hearings. Aboriginal people comprised 24% of all people supported by a CISO.

Bail outcomes

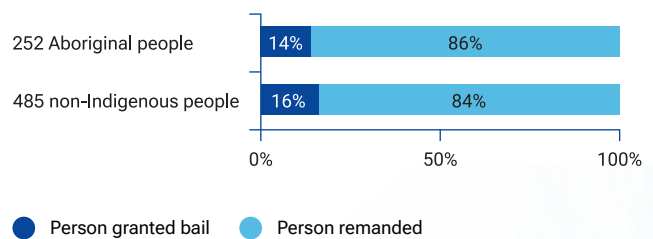
The data that OPA collects about the ITP Program provides a very limited insight into the experiences of Aboriginal people who come into contact with the program when compared with the data about the experiences of Aboriginal guardianship clients. However, the ITP Program data on outcomes in bail hearings is illuminating.

ITP clients will go before a Bail Justice if they have been charged by police and police wish to keep them in custody outside of court hours. A Bail Justice is an independent volunteer who determines, based on the *Bail Act 1977*, if someone will be given bail or remanded in police custody until court opens.

ITPs can attend after-hours bail hearings with clients to ensure they understand the hearing process and the meaning of bail and remand. ITPs are not involved in bail hearings at court.

In 2022–23, ITPs were present for 965 matters before a Bail Justice. In 737 of the 965 records on these matters, OPA noted whether the person was Aboriginal and also noted the outcome of the bail hearing. Almost one third (252) involved Aboriginal people and 485 involved non-Indigenous people. Graph 12 compares the outcomes for these 737 matters.

Graph 12: Bail hearing outcomes for ITP clients 2022-23 where outcome known



Reflections on OPA data

OPA seeks to learn from its experiences working with Aboriginal people with disability and, in the spirit of *dadirri*, has reported on the data to both illuminate these experiences, and reflect and act on what has come to light. OPA's understanding and awareness has been greatly enhanced by the reflections of guardians who have worked closely with the Aboriginal people whose story is only part told by the data.

From this reflection, 4 themes have surfaced:

- importance of culturally safe services
- need for access to appropriate housing and supports
- need for strong advocacy
- need for alternatives to Aboriginal guardianship.

OPA's awareness of these themes is deepened through contemplation of the DRC, the reports of the Yoorrook Justice Commission, the NDIS Review and other policy reports.

Importance of culturally safe services and systems

Culturally safe services and agencies should be appropriately resourced so that Aboriginal people with disability can be supported and lead flourishing lives. Many Aboriginal people with disability carry the heavy burden of trauma, poor mental health and wellbeing and/or past engagement with child protection. These circumstances have been found to be factors that heighten the risk of engagement with the criminal justice system.

How likely someone is to end up in jail depends on 8 factors, underpinned by structural causes. Being in foster care, poor education, early contact with police, unsupported mental health or cognitive disability, alcohol and drug problems, unstable housing or none at all, coming from a poor and disadvantaged neighbourhood – and being Indigenous. Tick them all off, and you're far more likely to be incarcerated.³⁴

Mental health and wellbeing statistics in *Balit Durn Durn*, the Victorian Community Controlled Health Organisation's *Report to the Royal Commission into Victoria's Mental Health System*,³⁵ show the prevalence of this burden:

- 33% of Aboriginal Victorians have been diagnosed with a mental or behavioural condition. This is nearly 1.6 times the non-Aboriginal rate.³⁶
- The rate of mental health-related emergency department presentations for Indigenous Australians was more than 4 times that for other Australians.³⁷
- One in three Aboriginal people experience high or very high levels of psychological distress. That is about 2.5 times the non-Aboriginal rate.³⁸
- Over 47% of Aboriginal people have a relative who was forcibly removed from the family due to Stolen Generations policies in Victoria. Transgenerational trauma continues to affect Aboriginal people in Victoria.³⁹

Well-resourced culturally safe services and systems can form a basis of support for Aboriginal people with disability in bearing that burden. OPA recognises that it must provide culturally safe services, and that it has a vital role to play in advocating for equivalent systemic changes. Strengthening cultural competence of staff is especially important for those government departments involved with guardianship, child protection and the criminal justice system as their involvement so often features tensions around autonomy and family ties.

The impact of systems that are not culturally safe is captured in this quote from a report of the Yoorrook Justice Commission, in which an Aboriginal person reflects on the child protection system:

Non-Aboriginal people know that if they are struggling they can go to any service and demand it as their right. Our people often feel that if they go and ask for help, that their parenting will be judged and their children will be taken away.⁴⁰

Cycles of discrimination and disadvantage in Australia's disability support system

The NDIS Review has said of cycles of discrimination and disadvantage in Australia's disability support system:

Our disability support system is underpinned by western concepts of disability and care.

This means our policies, programs, institutions and services often respond poorly to culturally and racially diverse concepts of disability and care. This further compounds experiences of inequality and discrimination, especially for Aboriginal people who face ongoing impacts of colonisation and a history of dispossession, not only of culture and Country, but of their bodies.

This supports a cycle of discrimination and disadvantage that affects the accessibility, quality and safety of supports received. This lack of safety can incite fear, trigger trauma, re-traumatise people and lead them not to seek available supports. We must do more to break these cycles of discrimination and disadvantage.⁴¹

This tallies with what OPA has observed in working with Aboriginal parents with a disability involved with the child protection system, that having a disability compounds both the negative expectations of child protection and the extent to which Aboriginal people feel their parenting is judged. A culturally safe child protection system that responds to disability is urgently needed, in respect of the experience of Aboriginal parents with disability and the outcomes for Aboriginal children with disability entering that system.

In 2024, OPA made a submission to the Joint Standing Committee Inquiry into the experience of NDIS participants in rural, regional and remote Australia. OPA argued that Aboriginal NDIS participants would benefit from First Nations Consultation and Engagement teams within its regional teams to provide secondary consultation and education to all NDIA planners and decision makers. These teams should be comprised of First Nations identified positions. OPA believes this would help reduce the barriers to accessing the NDIS and improve the NDIA's responsiveness to Aboriginal participants.⁴²

OPA has seen the positive impact on individuals who have access to culturally appropriate housing and services, including for decision-making support. One of OPA's submissions to the DRC was a joint submission with Connecting Home, an ACCO supporting survivors of the Stolen Generations across Southeastern Australia. In that submission, OPA and Connecting Home made recommendations including:

- the need for culturally safe and appropriate services
- the need for best practice in supported decision making for Aboriginal people with disability and for this to be part of wider self-determination processes and initiatives.⁴³

Regarding culturally appropriate decision-making support, the DRC recommended that:

- Guardianship legislation include within a set of supported decision-making principles that 'First Nations people and cultural and linguistically diverse people with disability are entitled to supported decision-making that is culturally safe, sensitive and responsive. This includes recognising the importance of maintaining a person's cultural and linguistic environment and set of values.'⁴⁴
- The National Standards for Public Guardianship be updated to 'recognise the importance of ensuring all engagement with Aboriginal and culturally and linguistically diverse people is culturally safe and responsive and that appropriate training for staff is provided to enable them to do so.'⁴⁵

In addition to increasing cultural competence of mainstream services and agencies, OPA recognises a need for innovative approaches in the delivery of services for Aboriginal people with disability. For example, in its 2021 submission relating to the *Disability Act 2006*, the Victorian Aboriginal Legal Service recommended that the Disability Act 'include a specific provision requiring the appointment of an Aboriginal Community Visitor to perform oversight and reporting functions relating to Aboriginal persons with disabilities placed in residential settings or accommodated at NDIS dwellings.'⁴⁶

As the DRC and NDIS Review have recognised, increased expertise and expanded programs within ACCOs are critically needed to deliver services for people with disability, including those with complex circumstances.⁴⁷ OPA supports the DRC recommendation that ACCOs receive block funding to be a provider of last resort, and notes that this is especially needed in rural, regional and remote locations.

Need for access to appropriate housing and supports

The data in this report highlights the importance of access to appropriate housing for Aboriginal people with disability. OPA notes that even for Aboriginal clients carrying heavy burdens of trauma and/or mental illness, improved wellbeing is often underpinned by the stability of a home.

A secure home is a vital foundation

The Yoorrook Justice Commission has recognised a home as a vital foundation for social and economic participation, good health, spiritual wellbeing and connection to Country and culture.⁴⁸

First Peoples in Victoria have extremely poor housing outcomes compared with non-Indigenous people... Without a secure home, First Peoples are denied social and economic participation, a decent education, good health, spiritual wellbeing and connection to their country and culture. This is exacerbated for children leaving the out of home care system, Elders, First Peoples with disability, survivors of family violence or other abuse, and people who have had contact with the criminal justice system.⁴⁹

For OPA's Aboriginal clients, the stability promised by appropriate housing can rarely be achieved without an appropriate level of funding for support, and culturally safe services. Many of OPA's Aboriginal clients' ability to access this is impeded by significant barriers. Guardians reported on these barriers in the context of the NDIA taking an adversarial approach to planning for appropriate funding levels, not taking into account cultural needs, and failing to make reference to cultural connections in its planning documents. OPA data shows that in 2022–23, 89% of OPA Aboriginal guardianship clients were NDIS participants or in the process of becoming a participant.

Finding of the NDIS Review: a breakdown of trust

'As a participant I have found the whole process stressful and defeating.' – Participant.

The NDIS Review has said:

These failings are compounded in Aboriginal and culturally and linguistically diverse communities, who are routinely subject to decisions being made without recognition and understanding of their culturally specific concepts of care, disability and community obligations.

This narrow, adversarial approach is one of the reasons why there has been a breakdown of trust between people with disability and the NDIA. The NDIA is considered not to value the experience and insights or trust the motives of participants; and participants lose trust in the motives, processes and personnel of the NDIA. Rebuilding this trust is essential to fixing the NDIS.⁵⁰

OPA supports in principle the recommendations made by both the DRC and the NDIS Review. OPA is aware that the DRC consulted widely with Aboriginal people and OPA would hope that the outcomes and any implementation is informed by the views of Aboriginal people.

Recommendations for changes to the NDIS

The DRC and NDIS Review have recommended that:

- an Aboriginal Disability Forum be established⁵¹
- the Aboriginal Disability Forum have the ability to direct funding to enable ACCOs to develop their capacity to design and deliver disability specific support services⁵²
- the Australian Government partner with the Aboriginal Disability Forum to develop a national strategy to improve the quality of the disability ecosystem for Aboriginal people with disability⁵³
- the NDIA:
 - provide block funding to ACCOs for flexible delivery of supports and services to Aboriginal people with disability
 - roll-out alternative commissioning arrangements for Aboriginal communities⁵⁴
- the NDIS Act include reference to participation in cultural life⁵⁵
- NDIA pricing arrangements recognise cultural supports and return to Country trips⁵⁶
- there be Aboriginal representation on the NDIA Board⁵⁷
- a First Nations Unit within the NDIS Quality and Safeguards Commission be established.⁵⁸

Need for strong advocacy

OPA has identified that at least 60% of Aboriginal guardianship clients in 2022–23 needed strong advocacy assistance. By strong advocacy OPA means persistent advocacy to one or more organisations over an extended period to achieve challenging goals in complex circumstances.

Guardians had to identify appropriate support coordinators able to work in a culturally safe way with clients with complex needs, advocate for access to specialist disability accommodation (housing designed for people with extreme functional impairment or very high support needs),⁵⁹ and initiate appeals to the Administrative Appeals Tribunal in relation to inadequacy of NDIS plans. These appeals are particularly complex, and preparing for and attending them takes significant time and collaboration with OPA management and legal officers as well as the person's care team.

OPA has also undertaken advocacy for improved, and culturally safe, service responses to family violence. OPA guardians have long reported the challenges in advocating for people with disability experiencing family violence. They have observed that the cycles of disadvantage and discrimination impacting Aboriginal people with disability result in even more complex circumstances when they are experiencing family violence.

Family violence statistics from Disability Royal Commission

According to the DRC:

First Nations women are at heightened risk of family violence... Data collected by the Australian Institute of Health and Welfare (AIHW) found that in 2016-17, rates of hospitalisation due to family violence were 34 times higher for First Nations women aged 15 and over than non-Indigenous women...

The risk of family violence is compounded for First Nations women with disability, as demonstrated in several national and state-based surveys... Data [from NSW⁶⁰] shows First Nations women with disability experience the highest rates of crime related to domestic violence when compared to First Nations men and non-Indigenous men and women with disability.⁶¹

OPA acknowledges there are several other avenues for impactful advocacy that are not currently being realised.

Low levels of funding for the ITP Program have adversely impacted opportunities for advocacy to make a difference in the lives of Aboriginal people with disability. As far back as 2012, OPA recommended in its report *Breaking the Cycle: Using advocacy-based referrals to assist people with disabilities in the criminal justice system* that subject to funding, OPA should develop an advocacy and referral scheme for clients who have had, or who are clearly at risk of having, repeat contact with crime.

Need for alternatives to Aboriginal guardianship

Aboriginal people with disability have the right to make decisions about their own lives and if they require help to do so, should be assisted through culturally safe advocacy and supported decision-making services.

OPA's data reflects the finding of the DRC that there is an overrepresentation of Aboriginal people under guardianship. OPA's data also shows that many Aboriginal guardianship clients are under guardianship for multiple years. OPA is striving to better understand the historical factors that compound this problematic overrepresentation and is looking at actions it can take to reduce the making or continuation of guardianship orders for Aboriginal people with disability.

In relation to the disproportionate number of Aboriginal people under OPA guardianship, in her November 2022 evidence to the DRC the Public Advocate noted that:

[G]oing back [there is] dispossession, Stolen Generations, intergenerational trauma, a fear of government services and then a deficit model that's applied to Aboriginal people. So, we are more likely to see people from an Aboriginal background to be found to have deficits or disabilities. But we also are seeing an increased number of people actually identifying as Aboriginal people and, in terms of our office, we are more diligently collecting that information as well.⁶²

A 2023 report commissioned and published by the DRC highlights detrimental impacts of guardianship for many Aboriginal people in the context of 'existing trauma from historic separation of families and lack of autonomy and self-determination.'⁶³ In addition, the final report of the DRC includes the following observation from a worker at an Aboriginal legal service:

[G]uardianship and administration of First Nations people with disability can be viewed as another feature of the historical tendency of governments to seek to protect, but in fact to control, First Nations people... [It is] important for public services, and public trustees and administrators, to be conscious of the level of distrust First Nations people often have towards governments and public agencies. This distrust is compounded when guardianship and administration orders remove First Nations people's ability to exercise self-determination.⁶⁴

Regarding the considerations for the making of guardianship orders, the DRC has recommended that tribunals recognise the impacts of guardianship for Aboriginal people. The DRC has recommended that tribunals consider:

- the likely impact of the order on the person's culture, values, beliefs (including religious beliefs) and linguistic environment
- the likely impact of the order on the person's standing or reputation in their community
- any other considerations pertaining to the person's culture.⁶⁵

The implementation of this recommendation would increase the significance of:

- OPA asking the Standard Indigenous Question to help identify Aboriginal clients. This goes beyond relying on the information in the guardianship application to VCAT about whether the person is Aboriginal, which was the previous practice. OPA has commenced action on this through enhancing the processes of its Guardianship Intake Team
- OPA Investigations Officers and guardians including relevant information about Aboriginal clients in their reports to VCAT.

The DRC noted that to help ensure represented people are under guardianship orders for the shortest possible time, public advocates, public guardians and public trustees need to identify and facilitate connections with potential decision supporters. This may include connecting a represented person with a disability advocacy organisation or peer support program.⁶⁶ This is particularly relevant for the Aboriginal clients who have experienced multiple guardianship orders highlighted earlier in this report.

There are currently insufficient culturally safe disability advocacy services and by extension, it is very difficult for Aboriginal people to access service support that might be a less restrictive alternative to guardianship. In light of this, OPA will seek to establish an Aboriginal advocacy program during 2024–28 that aims to prevent the making or continuation of individual guardianship orders.

Advocacy to divert matters from guardianship

Despite a lack of dedicated funding for this, OPA's First Peoples Engagement Lead is leading a small-scale trial of approaches to divert appropriate matters from guardianship to individual advocacy.

This has included advocating for people negatively impacted and disempowered by the mental health system and child protection systems.

An important aspect of individual advocacy is that it seeks to avoid retraumatizing a person who has experienced systemic racism and disempowerment.

OPA recognises that individual advocacy without guardianship is not appropriate where the protective function of guardianship is needed.

Next steps

As Dr Ungunmerr Baumann set out in her explanation of dadirri, after listening and contemplation, comes action. Despite the challenges of funding constraints, OPA has identified a range of next steps for its improved service delivery and to contribute to systemic change.

The actions have been categorised in the format of OPA's past Koori Inclusion Action Plans:

- systemic inclusion
- service improvement
- employment and economic participation
- community engagement and partnerships.

Systemic inclusion

OPA recognises that realising the goal of systemic inclusion involves embracing Aboriginal outcomes as a shared responsibility. In line with OPA's vision of a fair and inclusive society that respects and values the human rights and dignity of all people, OPA commits to undertaking systemic advocacy to contribute to systemic change for Aboriginal people.

OPA recognises that its systemic advocacy will have the most impact if it:

- is informed by relevant findings and recommendations of the DRC, NDIS Review and Yoorrook Justice Commission
- focuses on key issues that align with the functions of the Public Advocate and OPA's areas of expertise
- involves collaboration with ACCOs where possible
- is underpinned by principles of self-determination.

▶ Next steps for systemic inclusion

Systemic advocacy

OPA will develop a position statement on issues impacting Aboriginal people with disability to guide OPA's systemic advocacy work in 2024–28.

What success looks like

OPA has developed a position statement following consultation with representatives from ACCOs, organisations with relevant Aboriginal programs and/or Aboriginal consultants.

OPA has also identified and acted on opportunities to support systemic advocacy work of ACCOs aligned to our mission.

OPA has contributed to systemic change by undertaking systemic advocacy on these issues in a range of ways, for example, in submissions and reports. This includes systemic advocacy actions to improve the operation of the NDIS.

OPA maintains awareness of recommendations of inquiries and Royal Commissions that are relevant to the work of OPA and Aboriginal people with disability, including those of the DRC, Yoorrook Justice Commission, NDIS Review, Royal Commission into Deaths in Custody, Royal Commission into Victoria's Mental Health System and Closing the Gap reviews.

Update of National Standards of Public Guardianship

OPA will advocate to the Australian Guardianship and Administration Council for the *National Standards for Public Guardianship* to be updated to recognise the importance of ensuring engagement with Aboriginal people is culturally safe and responsive.

What success looks like

The National Standards have been updated to recognise the importance of ensuring all engagement with Aboriginal people is culturally safe. OPA supports the implementation of this standard through commitment to cultural competency training.

Service improvement

OPA argues that strengthening cultural competence is especially important for government departments working in guardianship (as well as child protection and criminal justice systems), given this work so often features tensions around autonomy and family connections. The data analysis and other information presented in the preceding chapters has allowed OPA to better understand the enablers and barriers to Aboriginal people accessing and participating in its programs and services.

▶ Next steps for service improvement

Identifying Aboriginal clients and making culturally sensitive reports

OPA will implement practices to improve OPA's ability to identify Aboriginal clients and provide relevant information in reports to VCAT.

What success looks like

OPA has a practice in place to ask the Standard Indigenous Question.

OPA includes information pertaining to culture in guardianship and investigation reports to VCAT that can assist VCAT to:

- know when someone is an Aboriginal person
- be aware of, and better understand, the impact of an order on that person.

Cultural safety training

OPA will implement and embed a cultural safety training program for OPA staff and volunteers that takes into account specific training needs of frontline staff and volunteers.

What success looks like

Appropriate training (for example, cultural awareness, cultural competency or cultural safety training) is offered to staff and volunteers. Appropriate training is offered at least twice a year (for example, Koorie Heritage Trust training).

Aboriginal and Torres Strait Islander Mental Health First Aid training is offered at least once a year (for up to 20 staff).

By June 2028:

- appropriate training continues to be offered to staff and volunteers at least twice a year
- all established staff have attended appropriate training
- OPA guardians who work with Aboriginal clients have attended mental health training and cultural safety training.

Depending on ITP Program resourcing, tailored training is offered for ITP Program volunteers at a range of locations and/or online.

Community of Practice and Yarning Circle

OPA will maintain the recently established Community of Practice for OPA staff and volunteers, and Yarning Circle for guardians that are led by OPA's First Peoples engagement roles.

What success looks like

Community of Practice meetings are held that enable staff and volunteers to consider:

- systemic issues impacting Aboriginal clients
- opportunities for service improvement.

Meetings focus on different topic areas and include guest speakers when appropriate.

Yarning Circles are held that provide guardians with the opportunity to:

- discuss, within a safe space, issues impacting Aboriginal clients
- share information and strategies to assist clients to access appropriate culturally safe services
- undertake reflective practice.

Advocacy

OPA will seek to establish an advocacy program for Aboriginal clients. The program will aim to divert appropriate matters from guardianship to advocacy, reducing overrepresentation of Aboriginal people in guardianship and provide additional advocacy support for OPA guardianship clients with complex circumstances and history of trauma.

What success looks like

OPA has sought and obtained funding for the establishment of designated roles to undertake advocacy.

In the absence of specific program funding, OPA has taken steps, with available resources, to divert appropriate matters from guardianship to advocacy and to provide additional advocacy support for OPA guardianship clients with complex circumstances and history of trauma.

If a funded program is in place, and to the extent that funding allows for this, advocacy is provided to Aboriginal people with disability aimed at diversion from the criminal justice system.

If a funded program is in place, workers in the designated roles also engage with ACCOs to assist in gaining increased expertise in this area.

Data to inform service improvement

OPA will continue to draw on its data to inform service improvement for Aboriginal clients.

What success looks like

OPA has continued to undertake analysis to better understand the experiences of Aboriginal clients. For example, in interactions with the health system, the criminal justice system and OPA's volunteer programs.

Employment and economic participation

The Public Advocate is a statutory appointment and OPA is a business unit of (and its staff are employees of) the Department of Justice and Community Safety. OPA is aware that the Department has a strong Aboriginal employment strategy and a demonstrated ability to attract, retain and grow the number of Aboriginal employees. OPA recognises that it is important to build from this foundation when considering how OPA can contribute to Aboriginal economic participation and employment opportunities.

Having designated Aboriginal roles is vital if OPA is to deliver culturally safe services.

▶ Next steps for employment and economic participation

Yarn Up

OPA will maintain space and time for Yarn Up meetings of Aboriginal staff, led by the most senior staff member.

What success looks like

Informal in-person Yarn Up meetings take place regularly.

Employer of choice

OPA will seek to be an employer of choice for Aboriginal people by:

- recognising the expertise that Aboriginal employees bring through their lived experience
- recognising the cultural load for Aboriginal employees
- providing appropriate assistance to the First Peoples engagement roles.

What success looks like

There is regular and appropriate recognition of the expertise of the staff in the First Peoples engagement roles at OPA, including at meetings and in all-staff emails.

A small committee provides effective and appropriate assistance to the First Peoples engagement roles. For example, administrative assistance in coordinating speakers, training and other events initiated by these roles.

Designated roles

OPA will maintain designated roles at OPA at a range of VPS levels.

What success looks like

OPA has at least 3 designated roles, including:

- First Peoples Engagement Lead/Advocate Guardian (VPS 5)
- First Peoples Engagement/Guardianship Support Officer (VPS 4)
- Trainee role.

Community engagement and partnerships

OPA seeks to develop partnerships built on genuine engagement with and respect for Aboriginal people across Victoria. OPA recognises that meaningful engagement and the development of collaborative partnerships provides OPA with a greater understanding of the needs of the community and allows OPA to respond appropriately.

▶ Next steps for community engagement and partnerships

OPA's First Peoples engagement roles take the lead

OPA will ensure that engagement and development of collaborative partnerships is led by OPA's First Peoples engagement roles.

What success looks like

The First Peoples engagement roles have led engagement activities and developed and maintained collaborative partnerships, with groups such as:

- the VCAT Koori Support Team
- State Trustees Aboriginal Engagement Officers
- Aboriginal Community Controlled Organisations
- the Balit Narrum network
- the Aboriginal Justice Caucus
- Victoria Legal Aid
- Victorian Aboriginal Legal Service.

The First Peoples engagement roles have contributed to updating the memorandum of understanding between OPA and DFFH Child Protection in relation to young people with disability soon-to-turn 18.

A committee and other OPA staff will be involved in these activities as appropriate.

Endnotes

- Office of the Public Advocate, *Walk with Me, Talk with Me: A practice guide for OPA staff* (Guide, May 2019) <<https://www.publicadvocate.vic.gov.au/opa-s-work/our-organisation/diversity-and-inclusion/171-walk-with-me-talk-with-me>>.
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *First Nations people with disability* (Final Report, September 2023) vol 9, 3 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>>.
- Yoorrook Justice Commission, *Issues Paper: Call For Submissions On Housing And Homelessness* (Issues Paper, 2024) 1 <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/11/FINAL-ISSUES-PAPER-Housing-and-Homelessness.pdf>>.
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *First Nations people with disability* (Final Report, September 2023) vol 9, 3.
- Ibid.
- 'Victoria: Aboriginal and Torres Strait Islander population summary', Australian Bureau of Statistics (Web page) <<https://www.abs.gov.au/articles/victoria-aboriginal-and-torres-strait-islander-population-summary>>.
- Involvement of Child Protection can be through the Department of Families, Fairness and Housing or, in some instances, ACCOs that are part of the Aboriginal Children in Aboriginal Care program may be involved.
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.10], 198.
- 'Violence, Abuse, Neglect and Exploitation of People with Disability', Royal Commissions (Web Page) <<https://www.royalcommission.gov.au/rounds/violence-abuse-neglect-and-exploitation-people-disability#:~:text=The%20Disability%20Royal%20Commission%20was,or%20a%20long%20time%20ago.>>>.
- 'Final Report', Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Web Page) <<https://disability.royalcommission.gov.au/publications/final-report>>.
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *First Nations people with disability* (Final Report, September 2023) vol 9, 3.
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *First Nations people with disability* (Final Report, September 2023) vol 9, 4.
- Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) <<https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>>.
- 'About the NDIS Review', Australian Government NDIS Review (Web Page) <<https://www.ndisreview.gov.au/about>>.
- 'Yoorrook Justice Commission', VIC.GOV.AU (Web Page) <<https://www.vic.gov.au/victorian-skills-plan-2023-2024/empowering-self-determination-First-Nations-peoples/yoorrook-justice-commission>>.
- 'Yoorrook Justice Commission', VIC.GOV.AU (Web Page) <<https://www.vic.gov.au/victorian-skills-plan-2023-2024/empowering-self-determination-First-Nations-peoples/yoorrook-justice-commission>>.
- Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023) <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/09/Yoorrook-for-justice-report.pdf>>.
- 'About Yoorrook', Yoorrook Justice Commission (Web Page) <<https://yoorrookjusticecommission.org.au/about>>.
- Membership of the KIAP Committee has been open to staff across OPA. Chairs of the Committee have included the Public Advocate and Deputy Public Advocate.
- The *Your Life, Your Choice* project was a 2017 project funded by the Victorian Legal Services Board. It involved providing information about planning for future decision making in Victoria and about guardianship and administration.
- The short data report, *A Koori Inclusion Action Plan data report to inform OPA service delivery*, was a compilation of demographic data from July 2010 to June 2015 in relation to OPA's Advocate Guardianship Program. OPA found that Aboriginal people who were clients of OPA's Advocate Guardianship Program during the period 2010 to 2015 had a younger age profile than guardianship clients as a whole, and presented less often with dementia and more often with intellectual disability and acquired brain injury (when compared to program clients as a whole). Of OPA's guardianship matters during the period, 1.4% involved Aboriginal people. This was likely to be an under-representation, due to data-recording practices of OPA during the period.
- This has included cultural awareness and unconscious bias training (in-person and online), speakers at OPA Issues Forums for staff and annual week-long 'Koori Film Festivals' held over lunchtimes at OPA.
- Office of the Public Advocate, *Walk with Me, Talk with Me: A practice guide for OPA staff* (Guide, May 2019).
- Only Aboriginal people are eligible to apply, recognising the nature of key aspects of the roles.
- Recruitment was undertaken for the First Peoples Engagement Officer role. The role is not currently filled.
- The notification process will involve contact between the First Peoples Engagement Lead and the VCAT Koori Support Team when guardianship orders have been made for Aboriginal people or when orders are due for reassessment to ensure First Peoples are receiving support from the VCAT Team.
- The Balit Narrum network includes representatives from the disability sector, ACCOs, and government and Aboriginal community representatives and aims to improve access and participation in the NDIS and other disability supports for Aboriginal people.
- 'June Spotlight: Overcoming Indigenous Family Violence Forum 2023', QIFVLS Queensland Indigenous Family Violence Legal Service (Web Page) <<https://qifvls.com.au/our-communities-matter-june/>>.
- Examples of feedback from staff following the session included: 'The most impactful Sorry Day event I have ever attended', 'You have provided me with a far deeper understanding of the meaning behind Sorry Day and the resilience of the Stolen Generations. Your generosity and brutal honesty is greatly appreciated.'
- Wear It Pink Day remembers Aunty Tanya Day on what would have been her birthday. See: 'Justice for Tanya Day', Human Rights Law Centre (Web Page) <<https://www.hrlc.org.au/reports-news-commentary/justice-for-tanya-day>>. Tanya Day was a proud Yorta Yorta woman who died in police custody from a brain haemorrhage after being locked up in police cell for being drunk in public and hitting her head on a number of occasions. The Human Rights Law Centre has said that at the time of her arrest, 'Aboriginal women were 10 times more likely to be arrested for being drunk in public than non-Indigenous women. The decriminalisation of public intoxication was first recommended by the Royal Commission into Aboriginal Deaths in Custody over 30 years ago. Following extensive advocacy by the Day family, the Andrews government committed to decriminalisation in August 2019 at the outset of the coronial inquest into Aunty Tanya's death.'
- When OPA receives copies of documentation from VCAT, the documentation includes information about whether the person is Aboriginal or Torres Strait Islander. OPA predominantly relies on this information in identifying Aboriginal people who are represented by OPA guardians. OPA staff do not consistently ask the Standard Indigenous Question to identify Aboriginal people who OPA works with.
- 'Victoria: Aboriginal and Torres Strait Islander population summary', Australian Bureau of Statistics (Web page) <<https://www.abs.gov.au/articles/victoria-aboriginal-and-torres-strait-islander-population-summary>>.
- Victorian Community Controlled Health Organisation, *Balit Durr Durr: Strong brain, mind, intellect and sense of self. Report to the Royal Commission into Victoria's Mental Health System*, 19 (Report, August 2020) <<https://www.vaccho.org.au/balitudurndurrcentre/>>.
- 'Eight factors leading to imprisonment (and how to prevent crime)' LSJ Online (Web page) <<https://lsj.com.au/articles/eight-factors-leading-to-imprisonment-and-how-to-prevent-crime/>>.

- 35 Victorian Community Controlled Health Organisation, *Balit Durn Durn: Strong brain, mind, intellect and sense of self, Report to the Royal Commission into Victoria's Mental Health System* (Report, August 2020) <<https://www.vaccho.org.au/balitdurndurncentre/>>.
- 36 Ibid 19, citing: 'National Aboriginal and Torres Strait Islander Health Survey (2018-19)', *Australian Bureau of Statistics* (Web Page) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/latest-release>>.
- 37 Ibid, citing Australian Institute for Health and Welfare data.
- 38 Ibid, citing Australian Bureau of Statistics data.
- 39 Ibid, citing Department of Health and Human Services data.
- 40 Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023) 128.
- 41 Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 31.
- 42 Office of the Public Advocate, *Submission to the Joint Standing Committee on the National Disability Insurance Scheme Inquiry into the experience of NDIS participants in rural, regional and remote Australia* (Submission, February 2024) 10 <<https://www.publicadvocate.vic.gov.au/opa-s-work/submissions/joint-standing-committee-on-the-ndis/692-inquiry-into-the-experience-of-ndis-participants-in-rural-regional-and-remote-australia>>.
- 43 Office of the Public Advocate and Connecting Home, *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: The experience of First Nations People with Disability in Australia issues paper* (Submission, April 2021) 4. <<https://www.publicadvocate.vic.gov.au/opa-s-work/submissions/royal-commission-into-violence-abuse-neglect-and-exploitation-in-disability-care/268-submission-to-issues-paper-on-first-nations-people-with-disability-accessible-html>>.
- 44 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations* (Final Report, September 2023) [Rec 6.6], 218.
- 45 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations* (Final Report, September 2023) [Rec 6.15], 222.
- 46 Victorian Aboriginal Legal Service, *Submission to Department of Families, Fairness and Housing, Victoria Review of the Disability Act 2006* (Submission., October 2021) 10 <<https://vals73.wpengine.com/wp-content/uploads/2022/02/VALS-Submission-to-the-Disability-Act-Review-2021.pdf>>.
- 47 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.5], 170-171; Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 46.
- 48 Yoorrook Justice Commission, *Issues Paper: Call For Submissions On Housing And Homelessness* (Issues Paper, 2024) 1.
- 49 Yoorrook Justice Commission, *Issues Paper: Call For Submissions On Housing And Homelessness* (Issues Paper, 2024) 1.
- 50 Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 27.
- 51 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.10], 198; Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) [Rec 20.4], 14.
- 52 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.10], 198.
- 53 Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) [Rec. 2.10], 78: '[T]he national strategy will address persistent gaps in the investment, coordination and development of culturally accessible and safe services for Aboriginal people with disability. It would also facilitate performance monitoring for Aboriginal people with disability against all Australia's Disability Strategy and the National Agreement on Closing the Gap (Targets and Priority Reforms). The national strategy should be supported by an Aboriginal Disability Investment Fund that prioritises the implementation of actions already identified by the Disability Sector Strengthening Plan and the forthcoming National Disability Insurance Agency Aboriginal Strategy.'
- 54 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.5], 171; Australian Government NDIS Review, *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) [Rec. 14.1], 190.
- 55 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.7], 176.
- 56 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.8], 177.
- 57 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, [Rec 9.6], 174.
- 58 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Disability services* (Final Report, September 2023) vol 10, [Rec 10.29], 25.
- 59 'Specialist disability accommodation, NDIS (Web Page) <<https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation>>.
- 60 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, 72-73.
- 61 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: First Nations people with disability* (Final Report, September 2023) vol 9, 72-73.
- 62 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Transcript Day 3 - Public hearing 30: Guardianship, substituted and supported decision-making* (Transcript, 23 November 2022) par 15, 336.
- 63 Deloitte, *Research report – Options to improve service availability and accessibility for First Nations people with disability* (Report, 2023) 97 <<https://disability.royalcommission.gov.au/system/files/2023-09/Research%20Report%20-%20Options%20to%20improve%20service%20availability%20and%20accessibility%20for%20First%20Nations%20people%20with%20disability.pdf>>.
- 64 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Enabling autonomy and access* (Final Report, Volume 6) 204.
- 65 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations* (Final Report, September 2023) [Rec 6.9(e)], 220.
- 66 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Enabling autonomy and access* (Final Report, Volume 6) 203. This is not a specifically listed recommendation of the DRC. However, the DRC notes that this action on the part of public guardians and public advocates is in line with principles set out in recommendation 6.6 in relation to supported decision-making principles. The DRC has recognised in its final report that there is a lack of Aboriginal led disability advocacy services though the demand for disability advocacy among Aboriginal people with disability is high.





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