

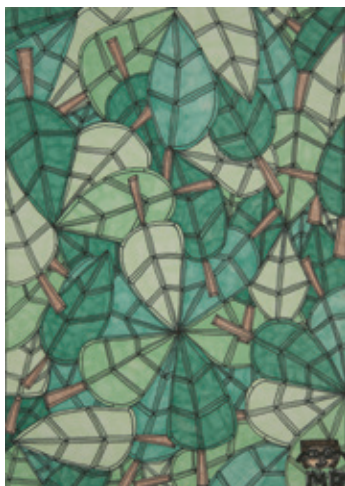


Office of the Public Advocate

2024 Annual Report

Safeguarding the rights and interests of people with disability





About the cover image

Stain Glass Leaves
Matt Robertson

“The story is about mixing up my art style with things like stain glasswear croc shoes and wool material.”

About the Artist

Being a true Artist Matt is always thinking of his art and what he is going to create next.

Matt brings to life on paper characters that have evolved through his imagination. His narratives are quirky and delight audiences with his instinctual use of colour. Matt also works in film and animation and hopes to further develop this aspect of his art practice.

Matt has shown success in selling his works in a number of shows including exhibitions in The Geelong Gallery, Deakin Waterfront Gallery and Federation Square Melbourne. This is a wonderful achievement considering his young age.

ArtGusto

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

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

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

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Message from the Public Advocate

Abuse

When I started at OPA 17 years ago, I sought to illuminate the devastating impacts of violence, abuse, neglect and exploitation experienced by people with disability, whether within a private home or within group-based residential settings. Numerous OPA reports have explored the experience of violence and exploitation of the people we work with, and OPA has also collaboratively researched and held forums on these issues – we have not worked alone in this space. Thanks to multiple Royal Commissions investigating the aged care, mental health, disability and family violence sectors in the last decade, significant evidence has been brought to light, and many of the systemic gaps enabling the perpetuation of these insidious issues have been exposed.

My final effort in this space is to look at the deeply concerning experiences of National Disability Insurance Scheme (NDIS) participants, vulnerable to being targeted by people purporting to provide services, whose intention is to drain their NDIS funding. As you will read again and again throughout this report, OPA has observed growing numbers of these experiences among the people we work with. The personal autonomy of participants is manipulated for the benefit of the service, with notions of will and preference (underpinning the *Guardianship and Administration Act 2019*) and choice and control (underpinning the NDIS Act) being weaponised against the person with a disability. Frequently the participant also endures harm when their care needs are neglected. An OPA discussion paper on targeted manipulation and personal autonomy will form the basis of a roundtable event to occur in the first quarter of 2024-2025, the first awareness-raising step in what I hope is continuing systemic advocacy to safeguard people with disability participating in the NDIS against this form of exploitation and neglect. I am struck by the similarities in the strategies identified in both our early work and this last paper on what makes a difference – a supportive scaffold of formal and informal relationships that enable supportive interventions and empower the person to make decisions.

Supported decision-making

OPA's own work on supported decision-making – a concept embedded in the Guardianship and Administration Act and a significant consideration of our work since its enactment in 2020 – has been bolstered by our reflection on the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Disability Royal Commission) explored later in this report. OPA acknowledges that supported decision-making developed with an objective of ensuring that people with disability are supported to remain legal decision-makers; that is, it was developed in opposition to guardianship. OPA has renewed its focus on prioritising the person with a disability being supported to be the legal decision-maker in several areas. Our guardians are seeking early revocation of orders whenever possible, to remove rights-limitations when they are no longer justified. Our guardians and investigators, many of whom are relatively new to our organisation, have also commenced 6-part training to become better informed about supported decision-making approaches.

Our strategic priorities

Early in 2023 office-wide planning sessions were held as we contemplated our values and vision and whether they best described our intentions. Our vision is 'a fair and inclusive society that respects and values the human rights and dignity of all people.' Our values were updated to respond to our current motivations and understanding of the work we carry out: respect, integrity, independence, inclusion and collaboration.

These values form the principles underpinning our *Strategic Directions 2023-2026: our blueprint for the future*. Released in July 2023, it sets out the key actions we will take to create a culture of excellence and a thriving organisation, to nurture our people, and to maximise OPA's impact as advocates, safeguarders, educators and system influencers.

Valuing diverse perspectives and lived experience are integral elements of our strategic priorities. We know that positive outcomes are derived both from collaboration and understanding lived experience, and the guidance of OPA's lived experience advisory committee plays a vital role. I would like to recognise the great work of this committee in the past year, which has made significant contributions to the training offered to our community visitor and independent third person volunteers as well as Supported Discussions and the Healthy Discussions project, within which the committee was first envisaged.

Inclusion projects

Our Department of Social Services' funded projects, Supported Discussions and Healthy Discussions, promote ways that people with disability can be supported to make decisions and strive to educate the community – particularly those professionals who regularly make guardianship applications, or work in healthcare.

Undertaken between August 2023 and June 2024, the Supported Discussions project acknowledged that guardianship is a rights-limiting last resort, and that the lived experience of people with disability engenders expertise on how services can best support and promote choice and control for people with disability. The project tested a range of education and advocacy approaches to divert people away from guardianship.

Healthy Discussions has gone from strength to strength, reaching large numbers of professionals in the health sector and in tertiary education with its message about the rights of people with disability to make their own healthcare decisions and be provided with support to do so if necessary. I was heartened to see that the recommendations of the Disability Royal Commission aligned with the intentions of this worthwhile project, now in its fourth year.

More too needs to be done to promote alternatives to guardianship, particularly supportive guardianship orders. OPA continues to see a need for the funding of independent supportive guardians for those people who could make decisions with support but are lacking an informal network to provide the means. To ensure that decisions made genuinely reflect the wishes of the person being supported, safeguards like training and registration of supportive decision-makers are critical.

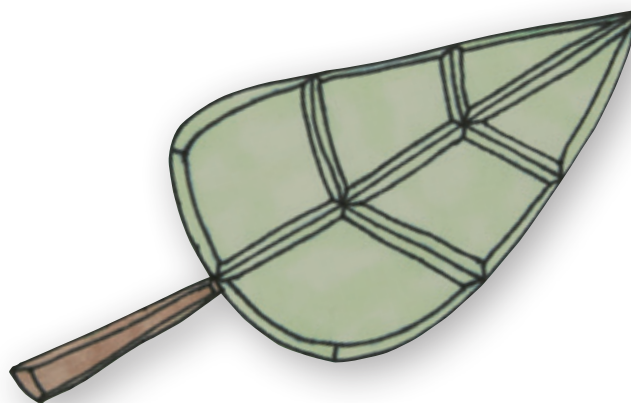
Operational developments

Our continuous improvement efforts involved 2 significant undertakings in the last year. In August 2023 we commenced testing our enhanced triage process for incoming guardianship matters, with the aims of meeting represented persons as soon as possible to learn first-hand about their will and preferences, as well as improving waiting times for the allocation of a guardian. Additionally, anticipating the release in May 2024 of the Victorian Auditor-General's Office report on OPA's guardianship and investigation services, we have worked to address the recommendations to OPA as well as seeking input from Department of Justice and Community Safety on those recommendations with which we were jointly tasked.

Themes from our work

This year we have highlighted key themes that are impacting our work. The themes are abuse, family violence, National Disability Insurance Scheme (NDIS), restrictive practice and the experience of First Nations people and serve to provide a narrative for the extensive work that OPA staff and volunteers undertake.

These themes were identified through our improved data capture and reporting process, and through the many notifications to the Public Advocate I received throughout the year. These themes have impacted all areas of OPA and are considered an area of strategic focus for our work. In the themes we are highlighting, the intent is to detail the impacts across the operations of the office and to illustrate how these themes are impacting the people we work with and for.



Thoughts for the future

As a proud Yuin woman, I have spent a lot of time thinking about Voice, Treaty and Truth-telling. There are obvious differences between the experiences of First Nations people and people with disability such as the impact of colonisation, dispossession, stolen generations, the loss of language, identity and culture, and the consequences intergenerational trauma. There are some very significant similarities such as the high rates of abuse, disempowerment, being largely invisible and disconnected from the broader community, and the importance of truth telling and being able to tell one's own story. OPA's soon to be published report *Foundations for change: OPA's engagement with Aboriginal people with disability* is a story, while bittersweet, that I wanted to tell, and I look forward to sharing our experience and next steps prior to my departure.

In closing

I often reflect on the people who came before me, from the inaugural Public Advocate, Ben Bodna, a fearless defender of the rights of people with a disability, to David Green, a wise leader in difficult times who secured the future and independence of OPA, to Julian Gardner, a human rights champion who showed how OPA could address complex ethical and moral issues about medical treatment and end of life, and now, to those who I will leave to continue the critical work of OPA, who all give much more to their duties than merely their time and expertise.

As Public Advocate, I have a vision of a world in which people with disability live free from abuse, neglect and exploitation and have satisfying, enjoyable lives, respected and welcome in their community. Throughout my 17 years at OPA, the level of dedication to the vision of the office has not changed, a truly remarkable achievement of the people this office attracts. I want to sincerely thank OPA staff and volunteers who dedicate themselves daily to achieving better outcomes for the people we work with and for. It is my great privilege to work with such compassionate and committed individuals. I will truly miss the collaboration and camaraderie we share as we all seek to make a positive difference in the lives of people with disability and mental health issues. I encourage you to become lifelong advocates for improving the human rights of all people. Use the rich knowledge you have gained throughout your work at OPA to guide your actions. Believe in yourself and act with courage, this is the best way to ensure we continue improving our society.

I wish you well.



Dr Colleen Pearce AM
Public Advocate

About us

The Public Advocate is a Victorian statutory officer appointed by the Governor in Council and answerable to the Victorian Parliament.

The Public Advocate is supported by around 120 staff who work at the Office of the Public Advocate (OPA) as part of the Victorian Public Service.

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

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

OPA works to safeguard the rights and interests of people with disability. It operates independent of government and government services.

The functions, powers and duties of the Public Advocate are set out in sections 15 and 16 of the *Guardianship and Administration Act 2019*. They include:

- the human rights and interests of a person with disability
- advocating on a systemic or individual basis for persons with a disability
- providing information and advice about the *Guardianship and Administration Act 2019*, the *Powers of Attorney Act 2014* and the *Medical Treatment Planning and Decisions Act 2016*
- investigate any complaint or allegation that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship.
- reporting to the Victorian Civil and Administrative Tribunal (VCAT) regarding the need for guardianship or administration
- being a guardian, if appointed by VCAT.

In addition, OPA raises awareness and understanding of legislation affecting individuals with disability or lacking decision-making capacity through various communication channels. These include publications of a website with substantial visitor traffic, an active LinkedIn account and effective media relations.

OPA also provides an advice service and conducts community information and education sessions.

OPA raises awareness and understanding of legislation affecting individuals with disability or who lack decision-making capacity.



Abuse

Overview

Abuse, in its various forms, remains a pervasive issue for the people OPA works with.

In 3149 OPA matters this year, a person with a disability was suspected of experiencing abuse or neglect. In 560 of these matters, immediate action was required to ensure the person's safety.

Community Visitors identified a further 327 issues of abuse throughout the year.

This action looks different depending on OPA's role. For example, an advice service officer may provide information about making an application to VCAT for the person's protection, an investigation officer may look at whether concerns raised in an application would be better addressed through other means – such as police intervention – and a guardian when making decisions on the person's behalf must weigh up rights promotion, rights protection, and the risk of serious harm to the person in the context of their will and preferences. When possible, OPA officers refer to other agencies empowered to investigate claims of abuse.

There is no agency in Victoria with a clear statutory function of safeguarding and supporting at-risk adults, a critical gap that OPA has consistently advocated for change on, including to the Disability Royal Commission and in *Line of Sight: Refocusing Victoria's adult safeguarding laws and practices* (2022).

What is impairment-related abuse?

Impairment-related abuse is when the person's disability is used as a lever of control. For example, impairment-related abuse might involve the perpetrator:

- limiting access to essential mobility equipment and communication devices (coercion/ control)
- withholding or over-supplying medications (physical abuse, neglect)
- threatening to withdraw care arrangements or institutionalise a person (psychological abuse)
- misusing their authority as financial attorney when the principal no longer has capacity to direct how their authority is exercised (economic abuse, financial exploitation).

Key statistics

Financial abuse was the most common form of abuse recorded across all OPA work. Following this, impairment-related abuse, psychological or emotional abuse, and neglect and acts of omission were the most prevalent among the forms of abuse suspected and recorded.

Abuse is multifaceted and can be hard to define. For each category of abuse listed in Table 1, it is important to note that these forms of abuse can intersect and be experienced concurrently.

Figure 1: Abuse as an issue by year

2023-24	560
2022-23	574
2021-22	605

Table 1: Top four abuse or neglect themes

	2023-24	2022-23	2021-22
Financial abuse or exploitation	120	74	83
Impairment-related abuse	97	57	63
Psychological or emotional abuse	91	73	74
Neglect and acts of omission	66	46	61

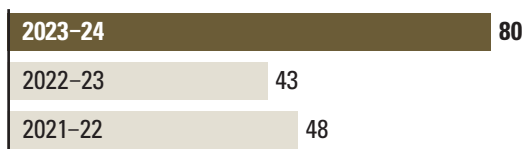
In 2023-24 planning commenced for amendments to the ways that OPA captures data about abuse and violence experienced by the people it works with. The implementation of this work will commence in 2024-25.

The changing dynamics of financial exploitation

While financial abuse continues to be the most common form of suspected abuse experienced by people OPA works with, the key features of financial abuse have changed in terms of who experiences it and how it is perpetrated.

In the past year, OPA records show a 62% increase of financial abuse across all people for whom OPA is guardian, and an 86% increase of financial abuse for NDIS participants with an OPA guardian.

Figure 2: OPA guardianship clients where financial abuse was an issue



Historically, the most commonly observed misuse of finances seen by OPA was elder abuse. This was generally an older person with cognitive impairment being financially exploited by a familial carer or financial attorney misusing their power. While financial elder abuse is still a common feature of OPA’s work, particularly for investigation officers and advice service officers, OPA guardians now regularly see financial abuse experienced by NDIS participants aged under 65 who are exploited by their NDIS providers. When working with people in these circumstances, OPA guardians fiercely advocate about their concerns to the NDIA to prevent or minimise any misuse of funding.

Where previously the target was a person’s life savings or assets, this year OPA has observed that a person’s NDIS funding is what motivates attempts at financial exploitation. Many financially exploited NDIS participants that OPA sees receive a disability support pension, have a scarcity of disposable income and informal support networks, and often other vulnerabilities like addictions and insecure housing. However, even these limited financial means are targeted by some NDIS providers. OPA has also worked with people whose NDIS providers have obstructed decisions about them moving to a new home, in order to maintain access to payments from their pension.

OPA has been guardian for many people involved with service providers who appear to have lured or incentivised the person to sign to their service, claimed their funding and then not delivered the expected supports. In some cases, this has led to the depletion of the person’s NDIS funding, causing disruptions and premature termination of services. Related issues include the neglect, physical harm and isolation that have been experienced by the NDIS participant as a result of changing from their usual support provider, missing out on the assistance they require, and being coerced into reliance on the one provider.

OPA notes that suspected financial exploitation of NDIS participants by accommodation providers is a prevalent issue. These providers often also provide support coordination and supported independent living (SIL) services, potentially having influence or control over all aspects of a participant’s life, particularly the support they receive. Susan’s story (page 8) shows how an OPA investigation of one person’s circumstances led to discovery of systemic issues, the detection of which stands to benefit a broader group.

OPA as a catch-all service.

OPA’s Advice Service receive calls redirected to OPA from the national elder abuse phone line. These callers are often desperate, upset and angry because they have been redirected by multiple services. Unfortunately, OPA does not have the capacity to investigate reports of abuse, particularly when there may not be evidence of the victim having a disability. Calls coming via provide a satisfactory response to callers who expect action on and resolution of their serious concerns. Currently in Victoria there is no statutory body authorised to investigate allegations of elder abuse that do not meet a criminal threshold for Victoria Police to investigate.

.....

‘These calls can be quite difficult and emotionally challenging to deal with as we cannot always provide the caller with a solution that satisfies them ... we do our very best to try to give the caller some means by which to explore and find resolutions to their concerns. It is not always very easy to achieve, and our caller often ends the call feeling less than satisfied with the outcome.’

Advice Service Officer

Susan's story

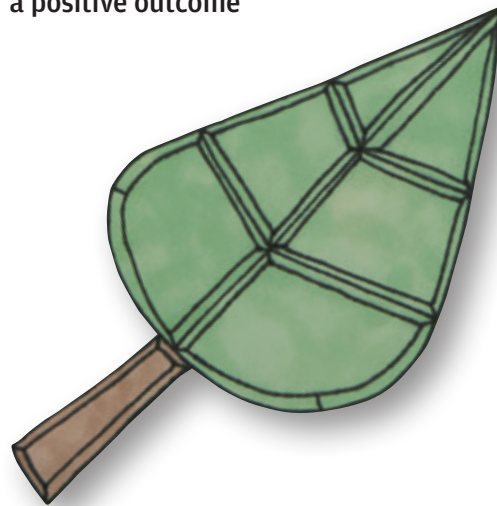
Susan's administrator had concerns that she was being unduly influenced by staff at her supported residential service (SRS) and raised these with VCAT who referred it to OPA for investigation.

The OPA investigation officer uncovered several concerns about the SRS's use of NDIS funding for Susan and other SRS residents. It appeared that residents were paying for disability services through their board and lodging fees, despite having NDIS plans, raising concerns that the proprietor was 'double-dipping' by operating both as a disability accommodation provider and a NDIS service provider.

The investigation officer made a referral to OPA's Community Visitors program so that the volunteers could provide a first-hand account of the situation. A formal complaint was then made to the Human Services Regulator. The Public Advocate also wrote to the NDIS Quality and Safeguards Commission to raise her concerns and highlight the need for further investigation into the SRS to ensure Susan and all people living there were safe and cared for properly.

The NDIS Quality and Safeguards Commission has since formed a joint taskforce with the Human Services Regulator to investigate these concerns further, and OPA is hopeful for a positive outcome for Susan and her fellow residents.

Names have been changed to protect privacy.



Family violence

Responding to the impacts of family violence is a daily occurrence across all OPA program areas.

The *Family Violence Protection Act 2008* (Vic) section 5(1) defines family violence as behaviour by a person towards a family member that is abusive physically, sexually, emotionally, psychologically or economically, and behaviour that is threatening, coercive or in any other way controls or dominates the family member and causes that family member to feel fear for their own safety or wellbeing, or the safety and wellbeing of another person. OPA's state-wide work with adults with disability includes supporting people with diverse experiences and intersectionality. OPA is aware that a greater risk of experiencing family violence exists when there are interdependent systems of disadvantage within a person's social characteristics, and where attitudes, systems and structures in society and organisations can interact to create inequality and result in exclusion.

In the past year Notifications from OPA staff to the Public Advocate have included numerous allegations of violence by a family member against a person with disability. The circumstances of these matters vary greatly depending on the age of the person, their relationship with the perpetrator and the nature of their disability. However, one common feature is multi-year OPA involvement.

OPA's longer term involvement with people experiencing family violence shows:

- that less restrictive alternatives to supporting decisions are not readily available for people with decision-making disability experiencing family violence, and
- that safeguarding and rights protection are needed on a continual rather than one-off or short-term basis – an indicator that the service system is failing to meet the needs of people with disability experiencing family violence.

The continuation of guardianship orders at reassessment suggests an ongoing need to make safeguarding decisions for the person, and that it can be extremely challenging to establish less restrictive alternatives in family violence circumstances. The doggedness of perpetrators seeking to control the person with a disability may be one explanation, but OPA has equally observed other pressures including:

- cultural expectations of familial care
- poor mental health of perpetrators contributing to the seemingly intractable nature of the abusive circumstances and
- difficulty in establishing a reliable safety net through mainstream and specialist service.

Guardians and investigation officers report barriers to accessing information to help them support a person experiencing family violence. OPA is not a prescribed Information Sharing Entity under the *Family Violence Protection (Information Sharing and Risk Management) Regulations 2018* nor the Multi Agency Risk Assessment and Management (MARAM) Framework. In 2023-24 there have been several examples where agencies who are part of MARAM have been able to access critical information about the person, but will not release it to a guardian or investigation officer. This may be information that would assist guardians to make decisions to protect a person or provide evidence within an investigation that would assist VCAT to make decisions about guardianship or administration orders.

Guardians and investigation officers find this challenging when decisions are time-sensitive and there are indicators of significant risks of serious harm to the person. An example of this occurred when a guardian went through a lengthy process to establish whether there were current intervention orders protecting the represented person, a young woman with disability experiencing intimate partner violence, from the partner/perpetrator believed to be sexually and financially exploiting her.

OPA has observed instances where Aboriginal women with disability experiencing family violence have not received sufficient support when facing situations of significant risk. This year, OPA advocated for better service system responses by:

- working with treating teams to ensure that accessible accommodation is found for a person leaving hospital
- engaging culturally sensitive support services for the person
- educating services about the multiple barriers for women trying to access assistance
- working with OPA's Independent Third Person coordinator to ensure police engage ITP volunteers when interviewing people with cognitive impairment about family violence
- providing short-term advocacy as a means of preventing an application for guardianship for Aboriginal people.

“First Peoples with disability should feel safe when they contact a mainstream service for assistance when they have either been a victim of family violence or are escaping it. Having culturally and trauma-informed practices consistently in first response teams, hospitals and mainstream family violence services will give First Peoples with disability a safe place they can feel comfortable to contact should they require help in their time of need.

Guardian

Guardians and investigation officers report barriers to accessing information to help them support a person experiencing family violence.

Good practice

The treating team in a metropolitan hospital acted proactively to maintain a safe space for their patient away from their family violence perpetrator. Staff also recognised the importance for the patient to return safely to Country. The treating team facilitated this return, notwithstanding the significant distance involved and the patient requiring appropriate support from a family member.

NDIS

System issues creating complexity

Each case involving a NDIS participant remains with OPA longer and requires more administrative resources than other guardianship matters.

In her August 2023 appearance before the Joint Standing Committee on the NDIS's inquiry into the capability and culture of the NDIA, the Public Advocate used evidence from OPA's data management system to show that younger people and NDIS participants spend significantly longer periods of time subject to guardianship than people over the age of 65 and explained the multiple factors contributing to this situation.

Some of these issues are linked to the lack of clear policies and processes for NDIS actors in relation to people with decision-making disability, while others stem from the changes to the mental health and disability services systems that came with the rollout of the NDIS. In addition to seeking improvements to the ways the NDIA engages with participants with decision-making disability, the Public Advocate continued her long-running campaign for the resourcing and development of supported decision-making programs for people who do not have informal supporters. Together with peer-support programs, independent advocacy and other capability-building opportunities, resourcing of supported decision-making is essential to reducing overreliance on guardianship.

In the past year, NDIS-related cases have generated on average 206 documents (such as emails, reports, and deeds), compared to 160 for other guardianship cases. The creation in 2022 of a dedicated NDIS team at OPA has helped guardians navigate the practices and policies of the NDIS as they change.

OPA has seen an increase in the number of individuals requiring urgent responses due to market and systemic failures. The primary issue is the overutilisation of a person's funds, causing disruptions and termination of services when funds have been exhausted. Sometimes the overspending was a direct consequence of inadequate initial funding within the plan. For example, OPA has observed many people who require one-to-one support (or even two-to-one support) being funded at levels adequate only for funding a ratio of 1 support worker to 3 participants. This means funds are depleted at a faster rate than planned.

Many support coordinators involved with OPA clients keep track of plan spending and are aware of the appropriate escalation pathways to request that the NDIA reassess the person's plan. OPA has access to an escalation process known as Critical Services Issues Response (CSIR). In 2023-2024 OPA's use of CSIR increased. In situations where the NDIA has failed to meet the NDIS Participant Service Guarantee timeframes on these requests, these delays have contributed to the people OPA works with being at significant risk, facing homelessness or complete depletion of their funding. This requires OPA to become involved in appeals and interventions.

Occasionally NDIS plan reviews result in increased funding for some aspects of a person's needs while leaving critical gaps in others, such as insufficient hours for support coordination or specialist behaviour support. OPA has worked with people who appeared to meet the criteria for specialist disability accommodation (SDA) who were not approved or funded by the NDIA for this essential plan component. Situations like these have required OPA to pursue appeals through the Administrative Appeals Tribunal (AAT), a process that is time-consuming, protracted and uncertain. OPA has observed that for the initial stages of AAT processes, such as conciliation hearings, it has been extremely difficult for represented persons to obtain the services of pro bono legal representatives. As a result, a guardian may be the only available advocate. In such circumstances, guardians are generally presented with voluminous NDIA documentation that they must be across in detail to support the case until later stages when legal representation can occur. At any one time, guardians carry many difficult cases with people in high-risk situations. The additional pressures of advocating at the AAT can be very demanding and stressful.

Complaints and referrals

The Public Advocate has used her specific powers of referral through the *NDIS (Complaints Management and Resolution) Rules 2018* to make complaints to the NDIS Quality and Safeguards Commission and has made numerous complaints to it about providers of concern exploiting clients. Through its work across multiple program areas, OPA has heard of and had direct experience of NDIS participants with large packages being given incentives such as cigarettes or illicit drugs to encourage them to change service providers and accommodation. These participants are at risk of being alienated from their existing support networks, becoming trapped in the new providers' range of services, and often are unable to explain what services they receive and that NDIS is billed for. OPA has seen residences housing several people who have had these experiences and is concerned about the apparent ease with which some NDIS providers can exploit multiple NDIS participants without detection or any apparent consequence.

Adek's story

Adek is a 41-year-old man with an alcohol-related acquired brain injury who has experienced periods of homelessness and social isolation.

While in hospital, 2 NDIS support workers claimed to be his aunt and uncle, asserting this gave them status in relation to decisions about Adek. However Adek reported he was not related to them. Adek also said he was being financially controlled and they were restricting his access to community supports, withholding his identification documents and taking possession of his phone. Adek became verbally and physically aggressive when they attend the hospital. They encouraged Adek to discharge against medical advice.

The hospital's urgent guardianship application was referred by VCAT to OPA for investigation. The hospital believed that the same NDIS support workers had, in the past 18 months, claimed to be related to other patients and arranged their accommodation. The treating team and OPA had serious concerns about the level and adequacy of the support the pair would provide, especially given the complexity of Adek's circumstances.

VCAT found there was no less restrictive alternative for making decisions about Adek's safe discharge from hospital and made an urgent guardianship order appointing the Public Advocate.

Names have been changed to protect privacy.

The Public Advocate has made numerous complaints to the NDIS Quality and Safeguards Commission about providers of concern exploiting clients.

Restrictive practice

What is restrictive practice?

Restrictive practices are actions that take away people's rights by restricting their freedom of movement or actions.

Categorised in 5 ways – chemical restraint, environmental restraint, mechanical restraint, physical restraint, and seclusion – restrictive practices are generally introduced to 'intervene' when the behaviour of the person is considered by others to be concerning, and are sometimes called restrictive interventions.

Restrictive practices should only be used as an intervention when the person's behaviour of concern may cause harm to themselves or others. OPA believes restrictive practices are currently being used in situations where it is unwarranted. Situations where restrictive practice should not be used include:

- the person's behaviour is challenging or annoying to others but not harmful,
- there are insufficient resources to adequately support the person less restrictively, or
- staff are inadequately trained to provide care centred on the person's needs.

Julian's story

Julian is a young man who sometimes shows behaviours of concern.

His parent, as primary carer, has employed methods such as tying him up to enable them to feed or medicate him. Julian has a substantial NDIS package, and his support workers are primarily from his own community. His parent explained to the OPA investigation officer that they had not been given information in simple English or a language they could understand about the best ways to care for Julian. The Public Advocate was appointed guardian and a referral was made to the Senior Practitioner to seek their input and advice.

Names have been changed to protect privacy

Behaviour support in the NDIS

OPA has observed new pressures arising from the individualised funding of the NDIS that add to the difficulty of preventing or reducing the use of restrictive interventions – the relative ease with which support staff can be engaged and cancelled. Frequent staff changes can frustrate attempts to settle a person's environment and there is generally insufficient NDIS funding to repeatedly upskill and train ever-changing support teams. Engaging untrained support workers may increase the risk of a person being subject to unregulated restrictive practice.

At other times OPA has been involved with people experiencing restrictive practice because the people that assist them are unaware that their actions are rights-restricting. OPA continues to be appointed as guardian in matters where restrictive practices are used within family homes. While generally raised with OPA due to concern that a person with a disability is being abused, OPA observes that in many of these matters the restrictive practices are not employed with malicious intent, but due to a lack of information, education, resources or appropriate support.

It is concerning that NDIS-funded support providers were aware of these restrictive practices and did not raise concerns. This highlights the challenges the NDIS has in ensuring service providers having sufficient knowledge and understanding of restrictive practices, the pathway for authorising them, and the human rights implications of unauthorised restrictive practices. There is an urgent need to raise community awareness about the use of strategies, including positive behaviour support, that do not result in restrictive practices.

Substitute restrictive practice decision-makers in aged care

In 2021, the Royal Commission into Aged Care Quality and Safety found that gaps in the regulation of restrictive practices were a significant human rights issue in Australia. The Australian government responded by revising the *Quality of Care Principles* to strengthen requirements for the use of restrictive practices in residential aged care facilities. Legal uncertainty around who could provide consent for the use of restrictive practices led the Australian government to enact a temporary solution to empower a broader range of people as an aged care recipient's 'restrictive practices substitute decision-maker' (RPSDM). The temporary solution requires that informed consent to the use of restrictive practices is sought from the care recipient themselves or, if the care recipient does not have capacity to give that consent, from their RPSDM.

This temporary solution will end on 1 December 2024. When these requirements took effect in July 2021, there was no-one under Victorian law who met the definition of RPSDM, which created issues for aged care providers seeking to comply with their obligations. OPA has recently seen an increase in investigation referrals seeking to have the Public Advocate appointed as RPSDM, as well as several guardianship orders giving specific RPSDM authority in relation to a person living in residential aged care. OPA immediately sought to have the guardianship orders revoked, contending that RPSDM does not constitute a personal matter as defined in section 3 of the *Guardianship and Administration Act 2019* (Vic).

OPA's Advice Service reports an increase in calls from psychiatrists and aged care facilities about consent for restrictive practices. The Advice Service is often treated as a 'catch all' advice option for any concern relating to restrictive practices, however these matters are often highly complex requiring expert advice complicated by the absence of a clear legislative substitute consent framework in Victoria. OPA considers that there needs to be more accessible ways for aged care providers and family members to obtain advice and education on this critical issue.

The need for an authorising environment for restrictive practice in aged care

In February 2024 OPA responded to the Victorian government's aged care restrictive practices consultation paper. OPA advocated for the introduction of an authorisation model – like that of the Senior Practitioner in the disability sector – rather than a consent model.

OPA's submission identified that the *Guardianship and Administration Act 2019* (the Act) put Victoria at the forefront of human rights by fundamentally resetting the legal and philosophical foundations of guardianship and that it would be a detrimental, backwards step to water-down the protections in the Act in order to permit restrictive practice decision-making.

The consent model proposed to use guardians as RPSDMs, however, the poor fit between the human rights framework of the Act and the intent of rights restriction of a RPSDM is one of several reasons OPA advocated for an authorisation model. With a consent-based RPSDM model, OPA is concerned the power imbalance between residential aged care providers and those from whom consent is sought may lead to circumstances where residents are threatened with eviction should consent not be obtained.

An authorisation model focuses on use of the least restrictive practice for the shortest time possible, and only as a last resort. A Senior Practitioner model for restrictive practices in residential aged care would provide a central, rights-based source of information and guidance, and a single, transparent authorisation process with robust safeguards. OPA's view is that this is much more likely than a consent-based model to increase compliance by service providers and drive meaningful reduction – and hopefully elimination – of restrictive practices.

The right of older people with disability living in residential care to live freely, with dignity and autonomy, and to receive the support they need to do so safely is jeopardised by the unacceptably high rates of use of restrictive practices across the Australian aged care sector. This is in part driven by inadequate staffing levels and other supports that would enable less restrictive alternatives to promote residents' safety.

Addressing the experience of Aboriginal People

For many years, OPA has highlighted the issue of overrepresentation of Aboriginal people under guardianship. Building upon previous work arising from OPA's Koorie Inclusion Action Plan, OPA has established 2 First Peoples engagement positions to improve its services and support.

OPA is also working with VCAT's Koorie engagement team to identify Aboriginal Peoples at an early stage in the VCAT application process to streamline support service navigation for the proposed represented person, OPA and VCAT.

These First Peoples engagement positions allow OPA to engage directly with and support Aboriginal people subject to guardianship, as well as providing advice and support to staff working with them. This year, the First Peoples engagement work has focussed on 3 key areas including building cultural competency at OPA, community engagement, and developing relationships.

Building cultural competency at OPA

OPA engaged the Koorie Heritage Trust to deliver training sessions aimed at increasing cultural competency and understanding among OPA staff and volunteers. These training sessions aimed to:

- develop awareness of the strengths of Aboriginal culture and people
- increase understanding about the connection between colonisation and its impacts today for Aboriginal people
- develop capacity to be more understanding and responsive to Aboriginal colleagues and clients.

In addition, 20 OPA officers attended a 2-day intensive training session on Aboriginal and Torres Strait Islander Mental Health First Aid.

OPA also hosted its inaugural Community of Practice focussing on health, a topic that affects the majority of OPA's Aboriginal clients. Matthew Crook, a proud Palawa man living on Dja Dja Wurrung country in Bendigo and Mental Health Clinician at Bendigo Health, attended as an expert speaker to help staff reflect and learn from their experiences. OPA is committed to continuing Community of Practices sessions as a regular reflective learning tool.

Community engagement

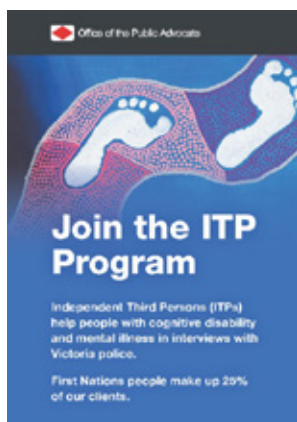
The First Peoples engagement officer identified a misconception held by Aboriginal and Torres Strait Islander people that involvement with OPA would lead to negative outcomes for them. This misunderstanding has contributed to fear and apprehension within the community, an unwillingness to engage with the services provided by OPA, and a lack of communication about actions that can be taken to support Aboriginal people with decision-making disability.

To raise awareness and dispel misconceptions about OPA's work, OPA's First Peoples engagement officer attended several community justice events organised by Aboriginal Community Controlled Organisations (ACCOs). These were difficult conversations but an important part of the truth-telling process and a first step in developing relationships. Subsequently OPA was invited to attend First Peoples events such as Sisters Day Out and a Deadly Grannies Group meeting. OPA officers from the Independent Third Person (ITP) program and Advice Service also attended meetings to answer questions and seek feedback about their work.

ITP focus on First Nations recruitment

To improve engagement and reduce recidivism for Aboriginal clients, work with the Koorie Court, and Aboriginal Community Controlled Organisations has commenced.

Another focus has been recruiting Aboriginal people as volunteers for the ITP program, a critical measure to ensure the program reflects and understands the needs of its clients.



Developing relationships

Connecting with rights-focused organisations on issues experienced by OPA's First Peoples clients has been a goal throughout the past year. At a presentation to Victoria Legal Aid in August 2023, OPA highlighted:

- mental health concerns for Aboriginal people under guardianship
- OPA's strategic priorities to improve services and accessibility for Aboriginal people and develop strategies that support culturally respectful relationships
- the work of the ITP program in this area.

OPA also invited members of State Trustees Limited's Koorie engagement team to host a question and answer session at OPA to address shared concerns about working effectively with Aboriginal people.

NAIDOC

During NAIDOC, OPA officers were invited to virtually visit the Me-Mandook Galk (Beautiful Grandmother Tree). The beautiful 400-year-old matriarch is on Nalderun-owned land and is a healing and resting place for the community. They were also introduced to First People, Grace and Callum, who work nearby cultivating bush tucker and running children's programs and visits to the land. OPA officers also attended the annual NAIDOC march from the Victorian Aboriginal Health Service to Flinders Street.

Thank you, Colleen

After 17 years as Victoria’s longest-serving Public Advocate, and almost 50 years in the sector, we thank Colleen Pearce for her tireless advocacy and powerful storytelling. She has carried out the role of Public Advocate with grace and the courage to venture where others wouldn’t.

In 2007, Colleen became the first woman and first Aboriginal Public Advocate to represent Victoria. A proud Yuin woman, Colleen reflected on the shared barriers faced by First Nations people and the disability community, ‘disempowerment, being largely invisible and disconnected from the broader community, and the importance of truth-telling and being able to tell one’s own story.’

Colleen brought with her a commitment to justice and human rights. A vision of a society where people with disability flourish in the community, are valued, respected and included in all areas of life.

Before becoming Public Advocate, Colleen led the way as Director of Moreland Hall, UnitingCare and the Victims Support Agency. Deputy Premier and Attorney General, Rob Hulls, proudly announced Colleen’s appointment as Public Advocate, ‘the role requires an astute and compassionate individual who well understands the experiences of people with disabilities.’

‘New Advocate Can Speak for Herself’

After taking over the position, Colleen led a new strategic plan. OPA’s mission became: To uphold the rights and interests of people with a disability and work to eliminate abuse, neglect and exploitation. Putting OPA’s mission into practice, Colleen introduced a notification system to ensure she be made aware of any matter concerning sexual assault, serious abuse, or unexplained injury.

When Colleen was included in The Age’s Top 100 list of people ‘who have made an extraordinary contribution to their field – and to their city,’ she used the opportunity to spotlight the ‘plight of 99 Victorians “stuck” in the mental health system.’

After co-hosting the Violence and Disability Forum, OPA published a damning report documenting abuse of people with cognitive disability. Colleen asserted, ‘it is an indictment on the community that we have not been able to find better ways of dealing with this issue.’

‘...truths to be told, painful stories to be shared’

Colleen has been a key contributor to the Disability Royal Commission’s public hearings. Her statements focussed on the human stories behind the headlines, ‘I recall what was uppermost in my mind was respect for the dignity of people with disability.’ She continued, ‘A human rights approach begins by recognising people with disability as bearers or holders of rights, both moral and legal.’

Speaking at the launch of ‘Failed ambitions’, a history of Kew Cottages, Colleen reflected on the ‘profound and heartbreaking impact of the failure of public policy on generations of people with intellectual disabilities.’ She concluded, ‘there are important truths to be told, painful stories to be shared and amongst those stories is the litany of broken promises and unfulfilled dreams of a better future for people with an intellectual disability.’

Colleen’s contribution to the Victorian community has been recognised with a Commonwealth Centenary Medal, membership to the Victorian Honour Roll of Women and appointment as Member of the Order of Australia. In 2018, Colleen was awarded an Honorary Doctorate recognising her contribution to the human rights of people with disability.

Legacy of hope

During her time as Public Advocate, Colleen has sought to amplify the voices of people with lived experience of disability, through consultation and employment.

Colleen has urged for a commitment to truth-telling and has challenged gag laws that silence people with disability from sharing their story, ‘we need to change the focus from risk to transparency’.

When asked of the challenges she has witnessed, Colleen reflected, ‘Human rights can seem far removed from our everyday lives. I don’t see it that way.’ She returned to the words of Eleanor Roosevelt for inspiration, ‘Where, after all, do universal human rights begin? In small places, close to home.’ OPA is itself a small place and within its walls Colleen’s voice resonates, leaving behind a legacy of compassion and a vision we can take into the future.



1. Dr Colleen Pearce awarding Villamanta Legal Services the Public Advocates 2023 award.
2. Fay Richards OAM and Dr Colleen Pearce.
3. Dr Colleen Pearce at the 2023 Police Awards.
4. Dr Colleen Pearce AM and guests celebrating the launch of the Australian Guardianship and Administration Council (AGAC) publication 'You Decide Who Decides'.





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SATURDAY, AUGUST 4, 2007 THE AGE



NEW PUBLIC ADVOCATE

Victoria's Attorney-General and Deputy Premier, Rob Hulls, has announced that the state is to have its first female Public Advocate. Colleen Pearce (above), who will take up the position on September 8, is a former director of UnitingCare..Most recently she was director of the Victims Support Agency and Diversity Issues Unit within the Department of Justice, where she oversaw the Victims' Helpline, Child Witness Service and the Working with Children Check Unit.

Mr Hulls says Ms Pearce, whose career has included positions working with the homeless and drug dependent, has devoted her working life to helping society's most disadvantaged. The Victorian Office of the Public Advocate aims to promote and protect the rights and dignity of people with disabilities. It offers investigation, advocacy and guardianship services and provides education and training to professionals and members of the public.



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5. Three Public Advocate's; Ben Bodna, Dr Colleen Pearce AM, and Julian Gardner AM.
6. Dr Colleen Pearce receiving her honorary Doctorate from RMIT University.
7. Belinda Clayton, Tarli Sali, William Ward-Boas, Lisa Brumtis, Dr Colleen Pearce AM, Jane Rosengrave (Proud Yorta Yorta Woman), Colin Hiscoe AM, Emma Asscher, Anat Bigos, Michelle Wilcox, Victoria Cini.
8. Dr Colleen Pearce providing evidence at the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Advice Service

OPA operates 2 telephone advice lines during weekdays – one line for all general enquiries and another is a medical decisions advice line for use only by health and allied health professionals.

Due to resourcing constraints, since September 2023, both advice lines has closed at 3.00pm rather than 4.45pm. Advice service users also contact OPA by email and drop in to OPA's office.

Table 2: How people contact the OPA Advice Service

	2023-24	2022-23	2021-22
Number	8,052	8,020	10,133
Percentage by email	14.4%	14.4%	13.1%

Relatives, health service staff, people with disability, community support service staff and NDIS support coordinators continue to be the main advice services users. In 2023-2024, relatives made up 38.2% of advice service users, an increase of 2.2%.

There was a minor increase in calls regarding guardianship and administration, which remain the most common inquiry type (rising to 32.3% from 29.3% in 2022-2023). Inquiries about how to make an enduring power of attorney decreased by 1.6%, while enquiries about existing authority instruments is now one of the top five inquiry topics, replacing advocacy.

Table 3: Top five Advice Service users

Caller	Number	%
Family	3076	38.2%
Health services	1502	18.7%
Self	918	11.4%
Community support services	780	9.7%
Support coordinators (NDIS)	528	6.6%

Table 4: Top five inquiry topics

Nature of inquiry	Number	% of all inquiries
Guardianship and administration	2604	32.3
Other general inquiries	684	8.5
Enduring power of attorney	666	8.3
Medical treatment decisions	485	6.0
Existing authorities/instruments	468	5.8

Abigail's story

Abigail, a proud First Nations woman, is a devoted mother to her young baby.

Abigail lives with physical and cognitive disabilities which affect her mobility, but she is fully capable of making her own decisions. Abigail manages her daily life with some assistance to support herself and her baby.

Unfortunately, Abigail faced financial and physical abuse from her ex-partner. The police intervened, and to ensure their safety, Abigail and her baby temporarily moved in with a trusted friend.

Around this time, Abigail encountered challenges with her NDIS package. A service provider, claiming to offer 'culturally appropriate' support services to First Nations people, had exhausted much of her funding. With little funding left, Abigail and her baby's medical needs were put at risk.

Seeking help, Abigail's support person contacted the Advice Service. They were advised to contact the NDIS Quality and Safeguarding Commission to report the organisation. A member of the Advice Service also worked with the support person to request an urgent reassessment of Abigail's NDIS funding.

Weeks later the support person called the Advice Service again to thank them for their help and advised that Abigail's funding had been reinstated and she would continue receiving NDIS support from a new provider, enabling her to focus on caring for herself and her baby.

Names have been changed to protect privacy.

Medical treatment decisions

Under the *Medical Treatment Planning and Decisions Act 2016*, the Public Advocate has authority to make significant treatment decisions under certain circumstances, including when a person lacks decision-making capacity, does not have an advance care direction, and has not appointed a medical treatment decision-maker.

Medical treatment decisions made

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

Table 5: Legislation through which medical treatment decisions were made

Matters	2023-24	2022-23	2021-22
s.62	4	1	6
s.63	399	374	368
s.81	4	5	15
Extension of s.63 decisions	23	17	28
Total	430	397	417

The Public Advocate made one application under section 67 of the *Medical Treatment Planning and Decisions Act*, compared to zero last year and 2 in 2022.

Outcomes of decisions

For medical decisions made by OPA in 2023-24, the most prevalent outcome was that significant treatment was consented to. This comprised 64% of outcomes.

Among the other less prevalent outcomes, in 6% of matters a medical treatment decision-maker was identified, 6% of treatment proposed was deemed to be covered by the emergency provisions, 1.2% of matters were determined to be palliative and 1.4% of matters were deemed to be routine treatment.

Cheryl's story

Cheryl was admitted to hospital after frequent presentations to its Emergency Department saying she did not have anywhere to live as she did not like where she currently lived.

One of the hospital's doctors submitted a request to OPA for a medical treatment decision for Cheryl under section 63 of the *Medical Treatment Planning and Decisions Act 2016*. The proposed treatment was 'sedation with or without physical restraints to facilitate a transfer to a sub-acute facility for discharge planning.' The doctor added that Cheryl was medically well but was refusing to leave the hospital.

OPA's Medical Treatment Decision officer acknowledged the complexity of the situation but advised that this did not constitute medical treatment and was instead a restrictive practice. Behaviour control is not applicable for a section 63 decision and therefore there was no medical decision for the team to make.

The doctor was advised to seek legal advice, to explore any applicable principles of the *Mental Health and Wellbeing Act 2022*, to review hospital policies that could assist with transfer plans and that if there was no less restrictive alternative, it may be appropriate to apply to VCAT for the appointment of a guardian.

Names have been changed to protect privacy.

Investigations

When VCAT receives an application for administration or guardianship, it sometimes refers the application to the Public Advocate for investigation and report. This gives VCAT more information on which to decide the application outcome.

Referrals from VCAT remained constant, with 312 referrals this year compared to 314 in the previous year.

Over the past 3 years there has been a fluctuation in the time taken to allocate matters. In 2021–22 the average days to allocation was 18.8 days, this reduced to 6.8 days in 2022-23 and rose again in 2023-24 to an average of 28.1 days to allocate matters.

Figure 3: Investigation numbers

2023-24	312
2022-23	314
2021-22	384

Clients' age

While the number of overall investigation referrals has remained relatively stable, referrals within most age cohorts decreased this year, most notably by 34% for people aged 30 to 40 and 35% for people aged 70-80. Conversely, while amounting to a small number, it remains concerning that the number of referrals for people aged under 20 has had a relatively significant increase of 50% (from 8 to 12 people). OPA will continue to monitor referrals for very young adults to determine what factors may be contributing to this trend.

Urgent investigations

Urgent applications received at VCAT are referred to OPA for investigation into whether the circumstances are sufficiently urgent to require orders to be made without hearing, a significant consideration as this means the proposed represented person is denied the right to be heard by VCAT.

In 2023-24, VCAT referred 42 urgent applications to OPA, representing 13% of all investigations. Since 2021 the number of urgent application referrals has increased. In the same period there has been a decline in the number of urgent orders appointing the Public Advocate. By looking for the least restrictive alternative whenever possible, investigation officers may have helped more people have their say at hearings.

Issue types

Noting that frequently there is more than one reason that VCAT refers an application for investigation, the top 5 reasons recorded in 2023-24 were:

Table 6: Top five reasons for an investigation referral

Reason for investigation	Number
Evidence of need for order	109
Evidence of capacity	75
Accommodation	88
Conflict between individuals	50
Possible financial exploitation	42

Referrals from courts under section 179 of the Guardianship and Administration Act 2019

Eleven referrals were received from courts concerning self-represented litigants who appeared to need the appointment of a guardian, supportive guardian, administrator or supported administrator. This comprised 10 referrals from the County Court and one referral from the Magistrates' Court.

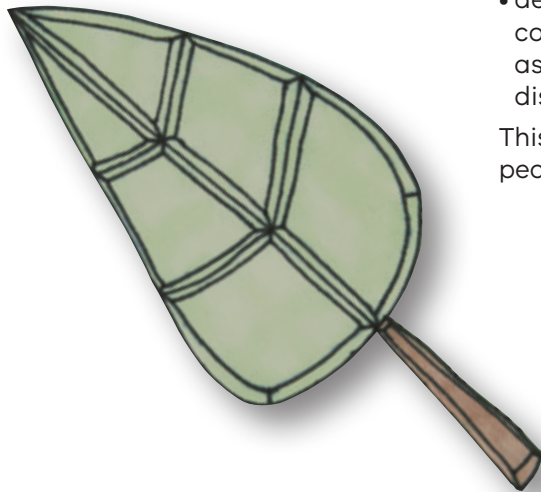
Special medical procedures

Special medical procedures are a specific category of medical treatment defined in the *Guardianship and Administration Act 2019* for which VCAT must provide consent if proposed to be carried out on a people with decision-making disability. This includes tissue transplants, pregnancy terminations or treatment which is intended or reasonably likely to have the effect of rendering a person permanently infertile (s140 GAA).

In 2023-24, OPA received 9 investigation referrals about applications for VCAT to provide consent for special medical procedures. Applications for special medical procedures are inherently complex matters. Investigation officers gather information on sensitive issues and provide a report to allow VCAT to hear the matter within 30 days of VCAT receiving the application.

Abuse

OPA receives referrals from VCAT to investigate matters involving allegations of financial or other abuse and exploitation or neglect of persons with disability. In the matters investigated, there were 36 cases where investigation officers believed there was information supporting the allegations.



Children leaving Child Protection

OPA investigation officers undertake the role of OPA VCAT liaison officers, and in this capacity, they have a role in advising Department of Families Fairness and Housing (DFFH) Child Protection about the suitability of proposed guardianship applications for young people with disability exiting their jurisdiction when they turn 18. In 2023-24, OPA gave advice in 31 consultations with child protection practitioners. This consultation process is established through a Memorandum of Understanding (MOU) between OPA and DFFH Child Protection, Victorian Aboriginal Child and Community Agency and Bendigo and District Aboriginal Cooperative.

Despite the protocol, in 2023-2024 child protection practitioners only consulted OPA about 5 of the 7 young people for whom the Public Advocate was appointed guardian.

Notably, 4 of the 7 guardianship orders involved Aboriginal young people.

That only 5 of the 31 consultations resulted in guardianship is a promising indicator that these consultations serve to promote less restrictive alternatives. OPA attempts to engage with its MOU partners to:

- raise awareness about the MOU among all child protection practitioners and
- determine ways to increase the number of consultations so that guardianship is not perceived as an automatic pathway for young people with a disability exiting the child protection system.

This is especially important for Aboriginal young people.

Statutory guardianship

Incoming orders

In 2023-24, 851 guardianship orders appointing the Public Advocate were made by VCAT, a 13% reduction from last year. This year 42% of orders were reappointment orders, compared to the previous year in which approximately 50% of orders were re-appointments. The reduction in overall appointments is believed to be due in part to increased wait times at VCAT for reassessment of orders. In addition, OPA has focused both on seeking the revocation of guardianship orders whenever possible and ensuring that the Public Advocate is only appointed as a last resort.

This financial year 6 urgent orders were made, 10 less than last year.

Table 7: Guardianship orders made

	2023-24	2022-23	2021-22
Guardianship Orders	845	961	946
Temporary/Urgent Guardianship Orders	6	16	26
Total	851	977	972

Clients' age

In 2023-24, the number of OPA guardianship clients aged 70 and above increased by 8%. All other age cohorts decreased this year, with a 34% decrease in guardianship clients aged 30 to 40 and a 27% decrease for those aged 40 to 50. In 2023-24, there was slight reduction in the proportion of NDIS participants among all OPA guardianship cases, down to 59% compared to 65% of all guardianship matters in 2022-23. It is possible that the decrease within these NDIS-eligible age cohorts partly explains this.

While amounting to a small number of people, it is concerning that in the past year OPA guardianship clients aged under 20 years increased 233% (from 6 to 20 people). OPA will continue to monitor the number of very young guardianship clients – noting that there has also been an increase in investigation referrals for this age group – to determine what factors may be contributing to this trend.

Complexity

Many societal factors impacting on people with disability contribute to the complexity of OPA's guardianship work, including:

- family violence and its associated impacts on safety, housing and health
- trauma and its impact on a person's mental and physical health
- the aftermath of multiple systems such as education or child protection failing a person, leading to low trust and low expectations of OPA
- service unavailability or inadequacy including insufficient culturally safe services, particularly in regional or remote areas.

This complexity is compounded by pressures arising from competing views, or conflict between relatives and friends of OPA clients, misunderstandings about the role of guardianship combined with the unrealistic and unreasonable expectations and communication demands that come from multi-practitioner care teams for each client.

Coercive authority

Section 45 of the *Guardianship and Administration Act 2019* empowers VCAT to make orders for the represented person to comply with the guardian's decision. These orders generally enable police, ambulance or other service providers to aid in the enforcement of a guardian's decision when there is no less restrictive means by which the decision can be implemented. The matter must be heard by VCAT, and the orders are limited to 42 days. The use of these orders has declined over recent years. This year, 11 s.45 orders were sought for 8 people, down from 15 orders for 11 people last year.

In some of these cases, the powers were unnecessary as OPA guardian convinced the individual to attend the hospital or receive treatment.

Guardianship in Hospital Program

OPA received funding for the Guardianship in Hospital (GIH) program again this year. The program aims to facilitate timely decision-making and discharge planning for patients. In November 2023, eligibility for this program was confined to people:

- over the age of 65 (previously there were no age limitations)
- have had a Victorian public health service employee apply for the appointment of a guardian
- ready for discharge from a Victorian public hospital with limited complex decisions.

Consequently, those aged under 65, in a private hospital, community service or health settings such as a Transition Care Units are now ineligible for this program. This has allowed the GIH team to concentrate on moving people out of hospital as quickly as possible.

In addition to the team's guardianship work, there has been strong emphasis on providing education to Victorian Health Networks. GIH officers facilitated bimonthly meetings with Victorian Health Networks in which a case study identified by one of the hospitals is used as a teaching exercise.

There has been strong emphasis on providing education to Victorian Health Networks about OPA's Guardianship in Hospital program.

Mavis's Story

A major metropolitan hospital applied to VCAT for the appointment of a guardian for Mavis, an elderly patient. Mavis prides herself on her independence. Mavis has dementia, cognitive impairment and a number of medical conditions. While she had limited family support, she had access to the highest level of community care funding. Despite this, Mavis was not able to remain safe at home, resulting in 12 hospital admissions over 18 months. She had been in hospital for multiple months prior to VCAT making orders appointing the Public Advocate as guardian and State Trustees Limited as administrator.

On receiving the guardianship order, the GIH team set about collecting the information needed for decision-making by contacting the applicant, visiting Mavis in hospital to obtain her will and preferences on where she would like to live when she left hospital, and liaising with State Trustees Limited about her financial means.

Within 2 days of OPA receiving the order, having obtained and considered all the relevant information, the guardian was able to make a decision about accommodation. Mavis entered a Transition Care Program managed by the hospital, and soon after was discharged to a residential aged care that would better suit her needs.

Names have been changed to protect privacy.

Enhanced triage pilot project

In August 2023 a pilot project trialed a new approach to OPA’s management of guardianship orders. This approach moved away from a centralised waitlist towards an enhanced triage process that prioritised visiting represented persons soon after orders are made. The project aimed to improve OPA’s responsiveness to represented persons and to seek early revocation of orders at VCAT when appropriate.

Making a visit to represented persons soon after guardianship commences provides them with the opportunity:

- to engage more meaningfully with OPA officers
- to relay in a timely way their will and preferences on decisions to be made and their general circumstances and
- to receive more information about guardianship.

The early visits enable OPA’s intake officers to obtain information on matters such as any potential risks to the person and time-sensitive decisions.

Within the pilot project, soon after the first visit, responsibility for working with the represented person is re-allocated from the intake team to the regional team. Intake support officers and guardianship support officers are a critical resource in the pilot project, assisting the communication and flow of information between represented persons and guardians.

The pilot project model mirrors OPA’s understanding of the typical pattern in guardianship matters, which often require intensive activity during the first 60 to 90 days following appointment. As key decisions are made and represented persons adjust to new supports, the need for intensive activity often diminishes.

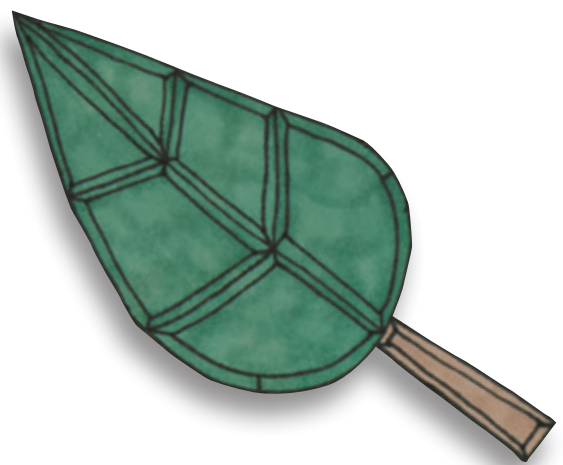
Wait List

Outside of the enhanced triage pilot project, guardianship matters received from VCAT are triaged and placed on a waitlist, where the represented person’s circumstances are assessed for risk, complexity, and urgency of need and prioritised for allocation

This year, there was a notable 20-day reduction in the time clients spent on the waitlist – a significant improvement in service delivery. This reduction is likely due to the implementation of the enhanced triage pilot project which has been instrumental in enhancing the efficiency and responsiveness of OPA’s services.

Table 8: Average Days to allocate a Guardianship Matter

	2023-24	2022-23	2021-22
Guardianship	71.2	91.4	59.8
Urgent Guardianship	2.0	6.5	3.5



Residential advocacy matters

The *Disability Act 2006* and the *Residential Tenancies Act 1997 (RTA)* require service providers to notify the Public Advocate of compulsory treatment or restrictive practices they intend to take against, or proposed actions relating to residential rights, of a person with disability. There are 8 notifiable events in the Disability Act and 6 in the RTA.

When notifications are received, OPA officers provide a safeguarding response, determine whether further individual advocacy is indicated and, when possible, undertake focused individual advocacy on behalf of the person with disability.

Notifications about a person’s circumstances and requests for a safeguarding response are also frequently made directly to OPA officers by service providers, support coordinators and relatives in circumstances where notification is not expressly required under either Act. These are known as non-statutory notifications and include notifications regarding threatened relocation/eviction of a resident (including specialist forensic disability accommodation residents) and residential treatment facility residents subject to compulsory treatment.

The recent amendments to part 12A of the RTA will not substantively change the statutory functions of the Public Advocate for these notices, except that they will be forwarded from the Director of Consumer Affairs.

The Public Advocate received 160 statutory notices this year. These comprised:

- 101 notices from residents with their intention to vacate,
- 50 notices of temporary relocation, and
- 9 notices to vacate.

Another 23 non-statutory notices were also received by OPA.

Ani’s story

Ani has an intellectual disability and was a resident in a specialist disability accommodation (SDA) run by a large accommodation service provider. Ani alleged that she had been sexually assaulted by her boyfriend, who was also a resident in the SDA. Without providing her with an appropriate notice under the RTA, Ani was relocated to a different SDA run by another accommodation provider.

Names have been changed to protect privacy.

This case highlights the lack of understanding by disability accommodation providers, even large ones, about their duties and obligations under the RTA. The trend of NDIS participants being lured away from their current accommodation by unlicensed SDA providers is of concern. Unless these providers are identified and are aware of their legal obligation, it could place residents with disability at risk of serious harm.

The low numbers of statutory notices received reflects the need for more education of specialist disability accommodation (SDA) providers.

Table 9: Residential Notices

Notification type	2023-24	2022-23	2021-22
Notices of temporary relocation	50	121	37
Notices to vacate	9	11	12
Notices of residents’ intention to vacate	101	41	8
Total statutory notifications	160	173	57
Non statutory notifications and safeguarding requests	23	13*	36
Total notifications	183	186*	93

** 2022-23 FY these numbers have been corrected as they contained 8 compulsory treatment matters.*

Individual Advocacy – Compulsory Treatment in Detention

Through responsibilities conferred by the *Disability Act 2006*, the Public Advocate has statutory safeguarding responsibilities for Victorians with intellectual disability currently subject to detention and compulsory treatment under a Supervised Treatment Order (STO).

STOs are civil orders authorising the detention of persons with intellectual disability for compulsory treatment. OPA also provides advocacy for people with intellectual disability admitted to a residential treatment facility under a criminal, quasi-criminal, or post-sentence order for compulsory treatment.

The purpose of compulsory treatment is to reduce the person's risk to the community and benefit the person subject to the STO, by maximising their quality of life and increasing their opportunity for social participation.

There were 79 compulsory treatment matters this financial year. This figure includes STO applications, applications for material changes and variations to existing STOs, expiry of STOs, and other safeguarding and advocacy issues.

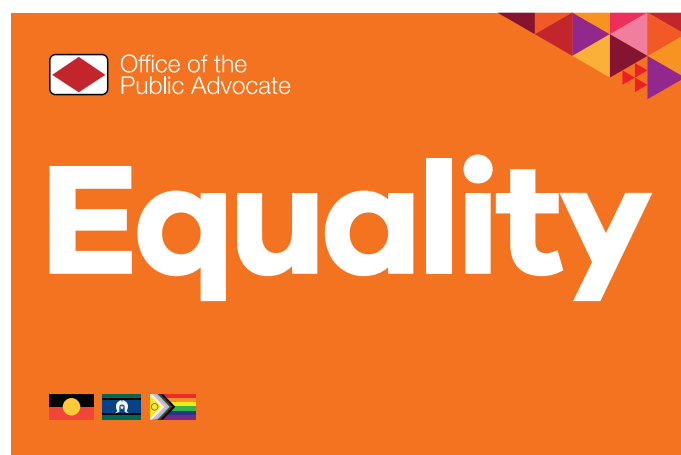
The legislative reforms in the *Disability and Social Services Regulation Amendment Act 2023 (Vic)* (Amendment Act) – that came into effect on 23 May 2023 – had greater effect this financial year. Of note, it is an offence for NDIS providers to detain a person with an intellectual disability unless a STO has been made. Four people became subject to an STO for the first time this financial year. In 3 of these new STO matters, the Public Advocate became aware that the person was being unlawfully detained and used her powers under Part 8 of the Disability Act to ensure that appropriate applications for STO were made.

With the commencement of the Amendment Act, there is no longer a requirement for an application to VCAT to determine that an STO has expired. Rather, an APO must notify the person subject to the STO, the Victorian Senior Practitioner, the Public Advocate and any other service providers specified in the STO that the STO is expiring. Now, the Public Advocate may apply to VCAT for an order directing an Authorised Program Officer (APO) to make an application for an STO where:

- the APO has not made an application for an STO under section 191 of the Disability Act, and
- the Public Advocate considers that the person is being detained to prevent a significant risk of serious harm to another person, without an STO applying.

This change has resulted in the Public Advocate having a new safeguarding function. This new safeguarding function requires additional resources to promote the rights of people with a disability and to ensure that people with disability are not being detained in the absence of an STO.

This financial year 2 people subject to significant levels of restrictions and detention successfully engaged in their treatment process resulting in them no longer being detained (one order was revoked and the other order expired).



OPA reflection on the Disability Royal Commission

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) handed down its final report in October 2023.

OPA made 13 submissions and provided 2 reports, and the Public Advocate appeared 4 times before the Commission and participated in a roundtable discussion on supported decision-making and guardianship. At the time of writing, OPA is still waiting for the Commonwealth, state and territory government responses to the Disability Royal Commission's 220 recommendations. The following is a summary of OPA's reflections on its priority recommendations, illustrating both where OPA sees the implementation of recommendations are most drastically needed, and where more nuanced consideration of the detail may be needed.



Amendments to the *Guardianship and Administration Act 2019*

Public disclosure and confidentiality restrictions (recommendation 6.12)

OPA supports legislative amendments to change the provisions prohibiting publications that identify a party to proceedings within VCAT's guardianship list. OPA supports the right of people to tell their own story, and in 2023 released a position statement seeking a change to these 'gag laws.' (publicadvocate.vic.gov.au/resource/file?id=302). The Public Advocate also appeared as guest speaker with self-advocate Uli Cartwright for the first episode of his podcast 'We Think Outloud' released 7 September 2023 which focussed on human rights and OPA's position statement.

OPA's position on other proposed amendments to guardianship and administration legislation (recommendations 6.4 – 6.10)

The Disability Royal Commission gave extensive consideration to guardianship and administration legislation across Australia, and Victoria's the Guardianship and Administration Act is the standard on which many of the recommended changes are modelled. OPA supports in principle many of the changes proposed for guardianship legislation but notes that closer consideration of the detail is needed on some recommended changes.

For example, changes to terms and definitions (recommendation 6.4) require further consideration, such as changing from 'guardian' to 'representative,' and 'supportive guardian' to 'supporter.' OPA supports a change from 'decision-making capacity' to 'decision-making ability'.

Recommendation 6.7 looks at the process for determining a person's decision-making ability. OPA gives in principle support for this recommendation, noting that the Act and OPA practices already give effect to most of its elements. However, based on practice knowledge, OPA holds concerns about the proposed requirement to obtain consent from the person before seeking the views of others about their decision-making ability. While in principle this would be ideal, it would not be practicable. VCAT members, guardians and investigators generally read the views of applicants and others before meeting with or speaking with the person – without doing this, they would be unaware of what needs to be discussed with the person, nor able to adequately plan and prepare for the hearing or meeting to the standard such significant personal interactions require.

Reflections on supported decision-making

Supported decision-making principles (recommendation 6.6)

OPA supports the recommendation to reform the Act to include the range of supported decision-making principles outlined in recommendation 6.6 of the Disability Royal Commission. OPA believes the Act's general principles (s8) do not adequately reflect the following proposed principles:

- Respect for dignity and dignity of risk (principle 3)
- Inclusion of safeguards (principle 7)
- Co-designed processes (principle 8)
- Cultural safety (principle 10)

Bringing the term 'dignity of risk' into the Act, as in *Victoria's Mental Health and Wellbeing Act 2022*, promotes a person's right to autonomy. Dignity of risk is a concept OPA guardians frequently explain to those providing support to the people OPA works with.

OPA also welcomes the Disability Royal Commission's recognition that abuse and undue influence may be used in the context of support orders. OPA sees a need for safeguards that ensure supported decision-making arrangements genuinely respond to and reflect the wishes of a person. Consideration should be given to strengthening the Act's safeguarding provisions for support orders.

Systemic advocacy and education on supported decision-making (recommendations 6.13 and 6.14)

OPA believes that increasing community understanding about support decision-making is critical for diversion from guardianship. This was a component of OPA's Supported Discussions pilot project delivered in 2023-2024, undertaken to trial some of the recommendations made in OPA's 2023 *Reflections on Guardianship: The law and practice in Victoria report*. OPA supports the Disability Royal Commission recommendations for Public Advocate offices and equivalents to have a role in increasing community understanding about supported decision-making but would require additional resourcing in order to extend its current advice, education and systemic advocacy work.

Supported decision-making in disability services (recommendation 10.6)

OPA welcomes this recommendation to change the NDIS (Quality Indicators for NDIS Practice Standards) Guidelines 2018 (Cth) to reflect that each participant is entitled to supported decision-making support. This highlights people's decision-making rights, and that people are entitled to have support for decisions if needed. OPA promotes the use of supported decision-making as a less restrictive alternative to guardianship as it enables people with disability to retain agency over their own decisions.

OPA notes that there must be commensurate funding and resourcing to develop a market for supported decision-making, and to have it funded in people's individual plans. In practice there will need to be a considerable upskilling of the disability workforce for this recommendation to be realised.

Supported decision-making and guardianship – OPA supports a binary approach

Another name for guardian is 'substitute decision-maker.' There is a tension between the nature of substitute and supported decision-making that OPA views differently to the Disability Royal Commission.

OPA is not aligned with the Disability Royal Commission position that future legislation and policy should take a 'principled approach' to supported decision-making. The principled approach situates supported decision-making and substitute decision-making as if on a continuum and proposes that the decisions made on a person's behalf can be deemed supported decisions as long as guardians used supported decision-making practices to make them.

OPA's view is that seeking to understand and act on the person's will and preference is not enough to change substitute decisions into supported decisions.

In contrast to the principled approach, OPA prefers the binary approach to supported decision-making, in which determining if a decision is 'supported' or 'substituted' rests on who was the legal decision-maker.

In the binary approach a substitute decision is defined by overriding the person's legal capacity to make their own decisions, even in situations where the decision is in line with will and preferences, or when supported decision-making practices were used.

In forming this stance, OPA is informed by the United Nations Convention on the Rights of Persons with Disabilities which sees legal capacity as key to upholding a person's human rights. OPA suspects that seeing guardianship systems as part of a continuum of supported decision-making services will undermine the vision of the Convention. In addition, there may be less impetus for governments to resource and promote accessible supported decision-making supports and services if last-resort guardianship can be rebadged as a supported decision-making service.

OPA's reflection on recommended housing reforms

Provider of last resort (recommendation 10.10)

OPA has long advocated for a provider of last resort system and considers this a high priority for implementation. A provider of last resort system would protect people considered 'too hard' for private disability service providers who are at risk of social admission to hospital because of homelessness, as well as people unable to exit prison due to lack of suitable housing.

Increase tenancy and occupancy protections for people with disability (recommendation 7.37)

OPA gives in principle support to the recommendation to adopt the best regulatory and legislative models for protections of tenancy and occupancy, but notes the following concerns about the protections offered by the recommended practices:

- It is unclear to OPA whether the introduction of 'occupancy principles' to the supported residential services (SRS) sector would strengthen the rights of SRS residents in practice, as there is already a legislated eviction process supported by the regulator
- In OPA's experience, when legislation changes, access to individual advocacy is an essential plank in ensuring the intended rights protection is achieved. Without support to take the step to appeal an eviction notice, for many SRS residents with disability the right will remain theoretical.
- In practice the protections of Part 12A of the *Disability Act 2006* are undermined by weaknesses in the accountability framework

Minimum service standards and monitoring of SRSs (recommendation 7.38)

OPA supports the Disability Royal Commission intent to ensure SRS residents have access to independent advocacy services, including supports to find pathways to alternative housing. However, OPA suggests that this goal would be undermined by relying solely on SRS proprietors to fulfil this role, as their business models may be financially tenuous and assisting residents to leave would further undermine their viability.

OPA supports the central records maintenance of serious incidents and proposes that summaries of such records should be publicly available to enable informed decision-making by potential residents.

Group home reform and phase out (recommendations 7.41–7.44)

OPA supports the recommendation for group home reform and welcomes the recommendation for a specific review looking into the conflicts of interests arising when a person has the same provider for both supported independent living and specialist disability accommodation services.

Adult safeguarding (recommendations 11.12 and 11.13)

OPA supports the recommendations and actions for legislative amendments to enable community visitor schemes to be recognised within the NDIS as a safeguarding component (recommendation 11.13). This will enable reciprocal information sharing so each agency can better achieve its safeguarding functions.

OPA sees this as a high priority and seeks its rapid implementation.

OPA notes that community visitor schemes should not become a tool for monitoring the wellbeing of specific NDIS participants who are not residing in visitable settings. Instead OPA would like to see resources committed to ensure that the NDIA and the NDIS Quality and Safeguards Commission can undertake these roles.

Systemic Advocacy

Lived Experience Advisory Committee

OPA's Lived Experience Advisory Committee provides input into OPA inclusion projects, systemic advocacy and programs of the office. The members of the committee are casual employees of OPA, who are all experienced self-advocates with different disabilities, experiences and interests, meet monthly and are paid for their time.

Colin Hiscoe AM

In the 2024 Australia Day Honours List, Colin Hiscoe, a member of OPA's Lived Experience Advisory Committee, was made an Honorary Member of the Order of Australia (AM) in recognition of significant service to people with disability through advocacy roles.

Colin was the founding member and is the current president of Reinforce Self Advocacy. He is an active member of many other disability organisations, often being involved in the founding and management of them. In the 1980s, Colin was one of a group that squatted in and secured an unoccupied government property in Carlton for Reinforce, after the government rejected multiple requests for the building to be turned into a shelter for people living with intellectual disability who were transitioning out of institutions or were experiencing homelessness.

Colin's advocacy continues to influence OPA's work. The success of a small project with Reinforce in 2019 – that promoted the right of all people to have a say in their own health decisions – led to the establishment of OPA's Lived Experience Committee and the Healthy Discussions Project.

The Public Advocate was delighted to host a celebration for Colin earlier this year, attended by many OPA staff and the Lived Experience Advisory Committee.

Key achievements

As part of the Healthy Discussions project, co-designing and reviewing 3 education modules for health students at tertiary level with The Centre for Collaborative Practice at The University of Melbourne University.

Sharing their lived experience in presentations to professionals working with people with disability, highlighting their right and in most cases ability to make their own decisions when they are provided with appropriate support.

Scripting, acting in and giving feedback during the co-design of 2 videos created as part of the Supported Discussions project. The videos are about the right of all people to make their own decisions and to receive the support they need to do so.

Participating in the *Human Rights and Disability* podcast, featuring interviews by and with people with disability.

Participating in the training of OPA's ITP volunteers, who provide support to people with disability or mental illness in police interviews.

Championing the importance of speaking and listening to people with disability about what supports they need to make their own decisions.

Sharing their achievements and ideas for possible future OPA projects that would promote and safeguard the human rights of people with disability.

Expanding the *Healthy Discussions Project* to include engaging with self-advocacy organisations to empower people with intellectual and cognitive disability to have a say in making their own health decisions. Committee members noted that due to assumptions about their ability to do so, many people with intellectual and cognitive disability had never previously been given the opportunity to make their own health decisions and may need to be supported in exercising this right.

Inclusion Projects

Healthy Discussions

Now in its fourth year, *Healthy Discussions: Supporting people with disability to make and communicate health decisions* aims to improve health practitioners' understanding of disability and the way they communicate with people with disability. The voices of people with lived experience are at the heart of the Healthy Discussions Project, with the program employing staff with lived experience of disability and receiving guidance from a paid Lived Experience Advisory Committee.

The project's message is that everyone has the right to play an active role in making decisions about their health and, to the maximum extent possible, receive the support they need to do so. Under Victorian law, all adults are assumed to have the capacity to make a health decision until it is proven otherwise. In addition to providing information and resources to health professionals and health students, this year the project included an additional focus on empowering people with disability to play an active role in making decisions about their healthcare.

The project, funded by a Department of Social Services (DSS) - Information, Linkages and Capacity Building: Mainstream Capacity Building Grant, began in April 2020. In November 2022, OPA received additional funding from DSS to continue to deliver the project up until the end of June 2024.

Key achievements

Developing 3 educational modules co-designed with OPA's Lived Experience Advisory Committee and the Centre for Collaborative Practice at The University of Melbourne University. The modules have been trialed by third-year medical students, and the intent is for them to be rolled out in other health sciences courses at the university and shared with health courses at all Australian Universities.

Creating the podcast *Human Rights and Disability*. Featuring interviews by and with people with disability, the podcast is embedded on OPA's website and promoted via LinkedIn and OPA's stakeholder newsletter.

Presenting 23 sessions to 543 people comprising 330 health professionals and 213 people with disability and support workers.

Successfully reaching out to and promoting Healthy Discussions to Primary Health Care Networks and hospital networks across Victoria.

Engaging with self-advocacy organisations to provide information to empower people with intellectual and cognitive disability to have a say in making their own health decisions.

Refining and developing targeted presentations for different audiences including people with disability, health professionals and health students.

Empowering people with lived experience to present on their experiences with health systems directly to health professionals and self-advocates.

Presenting at VALID's Having a Say Conference.

Increasing the promotion of Healthy Discussions via LinkedIn, OPA's stakeholder newsletter OPA Updates, and Disability Advocacy Resource Unit (DARU).

Meeting and working with key hospital and council staff, including disability liaison officers, to implement the Healthy Discussions project in metropolitan, rural and regional settings throughout Victoria.

Supported Discussions

Supported Discussions: Promoting ways Victorian service system organisations can remove barriers to access to services by using supported decision-making strategies is a pilot program aimed at diversion from guardianship in appropriate circumstances.

The project acknowledges that:

- guardianship limits a person's human rights and should be used as a last resort, when there is no other way to protect and promote the person's human rights
- people with disability have expertise derived from lived experience about the strategies services can use to best support and promote choice and control for people with disability.

Funded by DSS from April 2023 until June 2024, the project relates to Australia's Disability Strategy and Safety Targeted Action Plan, recognising that '[s]upporting people with disability to exercise choice and control in all aspects of their lives, as well as removing barriers and providing appropriate access to services and supports... [is] fundamental to ensuring the safety of individuals.'

Key achievements

Education sessions

These sessions targeted workers from sectors that commonly make guardianship applications including support coordinators, hospital social workers and other staff at Victorian health networks. OPA's Healthy Discussions, GIH, Medical Decisions and Advocate Guardian teams collaborated with the Supported Discussions project to facilitate the delivery of these sessions. 12 sessions (2 in-person, 10 online) reached 664 attendees, reflecting significant interest in the topics.

- 10 sessions – *Guardianship as a last report: Exploring alternatives* – promoted exploration of less restrictive options and strategies to support and empower people with disability to navigate service systems. They were presented by OPA officers including a person with lived experience of disability and a guardian
- 2 sessions on supported decision-making and navigating the NDIS presented by Leadership Plus, a disability advocacy organisation.

Videos

Supported Discussions produced 2 professionally filmed short videos focusing on decision-making rights. The intended audience for these videos are people who work with people with disability.

The scripts were co-developed with and performed by members of OPA's Lived Experience Advisory Committee.

The videos, *Decision Making: a human right* and *Decision Making: Rights of People with Disability*, are available on OPA's website and YouTube.



OPA's Lived Experience Advisory Committee.
Left – right: Anat Bigos, Colin Hiscoe AM, Dr Colleen Pearce AM (Public Advocate), Jayne Rosengrave (Proud Yorta Yorta woman), Victoria Cini.

Pilot program to divert appropriate matters from guardianship to short-term advocacy

OPA worked with Leadership Plus to trial a model for diverting appropriate matters from guardianship to short-term advocacy. Together they undertook 20 short-term advocacy matters involving advocacy, decision support and secondary consultations with workers, with significant time contributed by many OPA staff.

The most ambitious aspect of the project involved exploring whether appropriate matters could be diverted from guardianship at the point in time that a worker had applied to VCAT for the appointment of a guardian. Trialling this required both the good-will of VCAT and significant time on the part of OPA VCAT Liaison Officers. Through the project, OPA identified that this was complex and difficult to implement successfully.

Nonetheless, the trial provided valuable learnings with OPA identifying an alternative approach of focusing on a 'step down' from guardianship for people with disability who face barriers in transitioning out of guardianship.

This approach also aligned well with the observation of the Disability Royal Commission in their final report that:

'To help ensure represented people are under orders for the shortest possible time, 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'

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Enabling autonomy and access – Final Report Volume 6 (Commonwealth of Australia 2023).

The learnings from the project are valuable for OPA's future initiatives in seeking to identify and implement steps to help address the overrepresentation of Aboriginal people under guardianship.

Great Expectations: 35 Years of Community Visitors

In November 2023, OPA was excited to publish *Great Expectations: 35 Years of Community Visitors*, which looked back over the history of this important program.

Community Visitors are Victorian Governor in Council appointees who volunteer their time to visit accommodation facilities for people with disability or mental illness in their local area. They monitor and report on the adequacy of the services provided and, where possible, communicate with residents or patients to ensure they are being treated with dignity and respect. Community Visitors are supported and coordinated by OPA's Community Visitor Program, and the Community Visitor boards present an annual report to Parliament.

OPA was moved to prepare the report to commemorate the stunning 35-year enduring commitment of volunteers bringing benefit both to those visited and to the community, acknowledging both the progress made and the challenges ahead. The report argues that the safeguarding and human rights role of Community Visitors is as important and necessary now as it was in 1988, although the context and approaches will change to respond to changed environments.



*Great Expectations:
35 Years of Community Visitors*

The report captures historical moments involving Community Visitors, such as successfully advocating for significant improvements in certain facilities, and identifying significant violence, neglect and abuse of people with disability and mental illness in other residential facilities, such as Caloola and Kew Residential Services, which were ultimately closed. The report celebrates the achievements, frustrations, triumphs, disappointments and challenges in carrying forward the role on behalf of the Public Advocate.

The Great Expectations report details ongoing advocacy, outlining the protocols developed between the Community Visitor Program, the Victorian Disability Services Commissioner and the Mental Health Complaints Commission and the Human Services Regulator.

With the reports focus on the safeguarding benefits provided by the Community Visitors, the NDIS-related changes discussed are limited to those that have affected the operation of the Community Visitors Program and its safeguarding goals.

The report advocates for a comprehensive map of safeguarding relationships and responsibilities to further enhance the program's effectiveness, highlighting the Disability Royal Commission's recommendations for amendments to the NDIS rules to recognise Community Visitors, and amendments to state and federal legislation and the NDIS rules to allow for information sharing between Community Visitors, the NDIA and the NDIS Commission.

The report serves as an important advocacy piece for OPA and Community Visitors; it is an important time in the history of the program and changes made now will determine its future in the years ahead. The report identifies OPA's strong commitment to sustaining the three essential functions of the Community Visitor program:

- Bringing the community gaze into the places visited to expose abuse, neglect and exploitation and assess whether the living situation and support provided meet community expectations
- Maintaining unannounced visits to prevent the occurrence of abuse and neglect
- Fostering the wellbeing of residents and their inclusion in the community.

On 30 November 2023, the Honourable Lizzie Blandthorn, Minister for Disability, launched the Great Expectations report at Parliament House. The launch event garnered significant attendance, with Community Visitors, the Honourable Ingrid Stitt (Minister for Mental Health), and senior representatives from the DFFH, including the Deputy Secretary and other executives, in addition to the Deputy Commissioner, Disability Services Commissioner, and the Human Rights Commissioner, along with the VALiDate team. The Public Advocate was also joined by Fay Richards, Community Visitor for 30 years, a Regional Convenor and a Disability Services stream Board member and self-advocate Colin Hiscoe AM, as speakers at the launch.



The Hon. Lizzie Blandthorn, Minister for Disability with the Public Advocate, Dr Colleen Peace AM.

Photo credit: Glass Lens Photography

OPA's Community Visitor program has been profoundly important in helping to protect the rights and dignity of Victorian's with disability

Reforms for older persons

With the sunsetting of the *Quality of Care Principles 2014* (Cth) in December 2024, state and territory governments are responsible for implementing a legal framework to identify restrictive practices substitute decision-makers in residential aged care. In February 2024, the Victorian Department of Health released a Consultation Paper which proposed 2 options. OPA's submission strongly argued for a 'senior practitioner model' as vastly superior to the alternative 'integrated civil law' model described in the consultation paper.

The Public Advocate met with Minister Stitt to advocate her strong views which were received well by the Minister for Ageing, and the Public Advocate met with senior officials across government on this topic.

OPA also made a submission to the Australian Government Department of Health and Aged Care - New Aged Care Act Consultation in March 2024, addressing 2 key matters:

- Restrictive practices in aged care
- The Commonwealth decision-making model and interaction with state and territory guardianship and regimes.

OPA's systemic advocacy was detailed in the restrictive practices highlight theme earlier in this report. OPA eagerly awaits the outcome of reform in this space.

The Public Advocate has continued to advocate for the Victorian Government to respond to its 2022 report *Line of Sight: Refocussing Victoria's adult safeguarding laws and practices*, including in direct engagements with government officials, and multiple meetings with Victoria Police, who have shown strong interest in progressing relevant recommendations. The Public Advocate continues to engage at the national level on this topic, in her contributions to Australian Guardianship and Administration Council meetings and the twice-yearly national Adult Safeguarding Roundtable, facilitated by Queensland Public Advocate Dr John Chesterman.

World Elder Abuse Awareness Day in June 2024 provided multiple opportunities for the Public Advocate and OPA to shed light on scenarios of elder abuse and promote prevention and response approaches, including in presentations to Victoria Police and Maroondah City Council.

Reflecting on OPA's work with Aboriginal people

In 2023, OPA identified recurring themes in the experiences of Aboriginal people with disability who OPA works with, leading to an analysis of 2022-23 data as a way of better understanding the experiences of its Aboriginal clients. This will be published in the first quarter of 2024-25 in a report entitled *Foundations for change: OPA's engagement with Aboriginal People with disability*.

OPA recognises that 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. For Aboriginal people with disability, the very first step of engaging with services can be difficult, let alone finding ones that are culturally safe and inclusive.

Foundations for Change primarily focuses on OPA's guardianship and ITP work. It also includes next steps for service improvements and OPA's systemic advocacy work. The Disability Royal Commission report, the NDIS Review and the Yoorrook Justice Commission have all informed OPA's reflections.

OPA's next steps include:

- developing a position statement on issues impacting Aboriginal people with disability, to guide OPA's systemic advocacy work throughout 2024-28.
- improving 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 officers and volunteers
 - maintaining the recently established Community of Practice for OPA officers and volunteers, and Yarning Circle for guardians.

Advocating for parents with disability

OPA's commitment to working with DFFH Child Protection, advocacy and legal groups to promote the rights and interests of families and children with disability is ongoing. The impact on families of the 2016 permanency amendments to the *Children Youth and Families Act 2005* have been the focus of the Expert Forum seminars attended by OPA and held in conjunction with STAR Victoria and Grandparents/ Kinship Carers Vic. The forums have been valuable in building a network of the organisations working in this area. The most recent forum explored court processes and the experiences of advocates and families involved in the court system. It attracted participation from a wide range of organisations.

In the coming year, OPA will prepare a guide for staff working with parents with disability on a range of relevant issues including advocacy in relation to parents with disability involved in child protection matters. OPA will also continue its advocacy regarding its concerns about the impact of the 2016 permanency amendments, which gave a priority to legal permanency over other aspects of the child's well-being such as family connection and the restrictions on contact between children and their natural families.

OPA is committed to working with DFFH Child Protection, advocacy and legal groups to promote the rights and interests of families and children with disability.

Advocating about the NDIS

In February 2024, OPA's submitted a response to the NDIS Joint Standing Committee Inquiry into the experience of NDIS participants living in rural, regional and remote Australia. OPA focused on the NDIS experience of Aboriginal people who live in regional and rural Victoria and drew from the lived experience of people it works with within its guardianship program. In the submission, OPA raised concerns about participants experiencing thin markets, insufficient funding to support culturally sensitive service provision and culturally insensitive assessment processes by NDIA.

In accord with recommendation 9 of the NDIS Review, OPA recommended that the NDIS should deliver a diverse and innovative range of inclusive housing and living supports to include the commissioning of specialist disability accommodation in rural and remote areas. OPA also recommended that embedding First Nations consultation and engagement teams at the NDIA could enhance its responsiveness, consistency and effectiveness when working with Aboriginal Peoples.

Systemic advocacy officers were invited to present to the NDIA Independent Advisory Council (IAC) at their May 2024 meeting. The IAC represents the participants' voice in the NDIS and members represent a wide range of disability and advocacy sectors. OPA was the first state body to present to the IAC and presented on intersectionality and references to it within the final report of the NDIS Review in the context of the people OPA works with. OPA was pleased to see the NDIS Review's acknowledgement of the impacts of intersectionality on people's access to and experience of support services. This included recommending action to better fund systemic advocacy to lift the voices of people with multiple marginalised identities and help improve service outcomes.

Responding to targeted manipulation and coercive practices

The presence of manipulative agents – such as NDIS providers of concern and coercive relatives – in the lives of people with disability is well recognised by frontline OPA officers and has been prevalent in OPA work throughout 2023-24. There is a need for greater public discussion about how manipulation and coercion impact on the personal autonomy of people with disability. OPA is looking to share these insights with key stakeholders in 2024-2025 and together explore how to better mitigate these risks.

Collaborative work with the guardianship program throughout 2023-24 has informed this work. The systemic advocacy unit has helped to map issues arising in guardianship matters involving violence and exploitation, looking specifically at situations where a person is exploited by an unscrupulous NDIS service provider, and where a person experiences coercive control and intimate partner violence.

Reforms to housing safeguards

The Public Advocate contributed an editorial piece to the special edition of the Council of Homelessness's magazine, *Parity*, entitled 'No Other Option? Supported Residential Services, Private Supported Boarding Houses and Homelessness.' In this piece, the Public Advocate continued OPA's ongoing advocacy on behalf of SRS' residents for better regulatory protections and better standards of living and care. Much of OPA's advocacy on this topic is supported by the work and insights of Community Visitors, who she represents as chair of the board of Community Visitors Residential Services Stream. OPA and the Community Visitors have worked closely and productively with the Victorian Human Services Regulator, who will hand-over to the Social Services Regulator on 1 July 2024. Along with the broader regulatory powers that have been endowed on the Social Services Regulator and the extension of SAVVI supports to all pension-level SRS, OPA continues to advocate for targeted supports to assist SRS residents to find more appropriate accommodation outside the sector. Accessible and affordable social housing alternatives are needed if these quasi-institutional settings are to be avoided.

The Public Advocate recognises the essential role played by all Community Visitors in relation to the rights and safety of people living in supported accommodation. OPA Community Visitors also visit disability services accommodation which includes NDIS-funded SDA. OPA's work with disability researchers and the Community Visitors program has led to the development of a framework for thinking about the proper role of Community Visitors in a comprehensive adult safeguarding system, the need for which was identified by both the NDIS Review and the Disability Royal Commission. OPA continues to support the Community Visitors Disability Services board in its ongoing advocacy regarding their role within the NDIS, including in supporting relevant recommendations made by the board in the Community Visitors annual report.

Communications

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

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

Website

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

LinkedIn

OPA’s LinkedIn channel is being used to share information and highlight emerging themes coming out of its work. Please consider following OPA’s page: au.linkedin.com/company/office-of-the-public-advocate

OPA Updates

OPA Updates is an accessible electronic newsletter designed to provide stakeholders with timely information, valuable resources, promote upcoming events, and support advocacy efforts. Throughout the 2023-24 year 6 newsletters were released bi-monthly to the 1,392 subscribers, excluding OPA staff.

On average over 50% of the distribution list clicked through one of the links included in the update, meaning over 650 people engaged with OPA material each time an update was sent out. Subscribe to OPA’s newsletter <https://www.publicadvocate.vic.gov.au/the-public-advocate/in-the-news/our-news>

Media

OPA continues to promote issues via traditional and digital media. This year OPA was mentioned in over 200 media articles, with a noticeable spike in digital news outlets. The key topics covered include abuse, neglect and violence in care facilities, enduring powers of attorney, Community Visitors Program work, issues with NDIS funding being drained and ongoing concerns about restrictive practices including inappropriate guardianship orders.

Community Education

In 2023–24, due to resourcing constraints, targeted in-person community education sessions were paused. OPA’s community education about powers of attorney and guardianship and administration was delivered predominantly via structured twice-weekly online sessions and a weekly online drop-in session for general advice. The table below shows that despite running fewer sessions we were able to reach a greater number of people through our cross office community education work.

Table 10: Education sessions and audience numbers

Notification type	2023-24	2022-23	2021-22
Sessions delivered	157	163	180
Audience	2,834	2,538	3,795



OPA's resources

This year 66,125 resources were downloaded, slightly higher than the 64,898 in 2022-23. The increase in downloads about enduring powers of attorney, coinciding with increased media mention of the OPA website on talkback radio programs discussing end of life planning and powers of attorney.

Table 11: Top ten resources downloaded (2023-24)

Publication title	Copies downloaded
Enduring power of attorney appointment form – short version	10,854
Take Control – June 2022	6,727
Enduring power of attorney appointment form – long version	4,223
Advance care planning and substitute medical treatment decision-making	4,136
General non enduring power of attorney appointment form for where appointing alternative attorney(s)	3,900
General non enduring power of attorney appointment form for where not appointing alternative attorney	2,742
Guardianship and administration fact sheet	2,055
Can your adult patient consent? Flowchart	1,988
A medical treatment decision-maker's guide	1,953
Guardianship and administration: An introduction (brochure)	1,882

The number of OPA publications distributed by its distribution partner Victoria Legal Aid was 25,606, a substantial increase from last year (21,502). This includes a 17% increase in the number of *Take Control* resource that was distributed.

Table 12: Top three resources distributed by VLA

Publication title	Copies requested
Take Control	20,525
Supported decision-making	2,119
Guardianship and administration	1,999

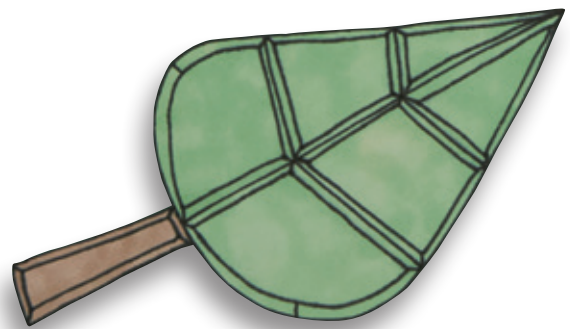
Public Advocates Award

Villamanta Disability Rights Legal Service was awarded the Public Advocate award this year, for their leadership in the fight to protect tenancy rights and ensure that people with disability have a secure and supportive living environment.

When presenting the award to Villamanta, the Public Advocate noted a case where a person with disability was being held in hospital for no clinical or medical reason. While this person had a home and was continuing to pay rent, the SDA provider refused to allow him to return to his home due to concerns about his behaviour. The provider did not issue him a formal residential notice which could have lawfully excluded him from the property temporarily, so the rights protections he was entitled to were not triggered.

OPA sought the support of Villamanta to advocate for them, providing invaluable assistance that ultimately led to the person leaving hospital to go to a new home with support from another provider.

Villamanta also made substantial contributions to various initiatives, including addressing 'gag laws,' responding to the NDIS Quality and Safeguarding Framework Independent Review, participating in the Disability Royal Commission and responding to the Public Consultation Draft: Psychotropic Medicines in Cognitive Disability or Impairment Clinical Care Standard.



Public Advocate Police Awards

OPA together with Victoria Police hold an awards event to celebrate International Day of People with Disability. The Public Advocate Awards recognise police members who demonstrate the ideals of the ITP program and have ensured people with disability are not disadvantaged during police interviews.

December 2023 was the 10th year OPA has held the Public Advocate awards and this celebration was a timely reminder of how far Victoria has come in progressing equal access to the justice system for all.

The Ben Bodna Award

Named after Victoria's first Public Advocate, the Ben Bodna award recognises exceptional Police leadership in support of Victorians with disability.

For their outstanding effort in supporting a victim of ongoing assault and mistreatment by her disability support workers, Detective Senior Constables Kinghorn, Woolfe and Perez were presented with the Ben Bodna award.

The exemplary work of these officers resulted in significant sector improvement including establishment of case law that allows covert installation of CCTV in residential care facilities where it is suspected a person with complex disability and communication barriers is being abused.

The methods employed by these officers and the quality of the support they provided was recognised as outstanding and will be used as case study for training future detectives. Their use of Augmentative and Alternative Communication methods and victim-centric support for the victim and her family was notable.

The Public Advocate Award for Outstanding Police Service to People with Disability

Sergeant Mark Osborne received this award for his ongoing engagement and commitment to improving the outcomes for a community member with autism, who had regular involvement with police. Mark created alternate activities to reduce anti-social behaviours, and this strategy has reduced the person's involvement with police.

Sergeant Kate Lockyer received this award for her work organising community events at Whittlesea Showgrounds where the community, disability services, schools, childcare services, advocate services and police, set new Australian records for the longest paper chain and longest human chain. Kate also developed an innovative disability toolkit to improve police capability when interacting with people with disability.

ITP Awards

The ITP awards are nominated by ITP volunteers, based on their experiences at different police stations.

Regional Police Station

Benalla SOCIT was nominated by ITPs who had attended several interviews at Benalla, describing all the interviews as treating every person with the utmost respect and kindness whether they are alleged offenders, victims, or witnesses.

Metropolitan Police Station

ITPs cited the high standard of professionalism Mernda Police Station when dealing with clients with a cognitive disability. Police were described as courteous and considerate, punctual and mindful of individual needs of alleged offenders, victims or witnesses. Also cited was the good management and leadership at the station and its best practice leadership.



Senior members of Mernda Police Station with the Public Advocate, Dr Colleen Pearce

Volunteers

OPA is supported by over 600 volunteers who provide their services in one or more of OPA's volunteer programs as Community Visitors, Independent Third Persons and Correction Independent Support Officers.

OPA's volunteers come from a rich and varied background of life skills, ages, experiences and communities. OPA's youngest volunteer is aged 22 and the oldest is aged 89. While coming from diverse experiences they all share a common goal of wanting to make a difference in the lives of people with a disability and/or mental illness.

Some OPA volunteers make themselves available 24 hours a day, 7 days a week and others have provided over 30 years-service. Several volunteers provide their services in more than one of OPA's volunteer programs or more than one Community Visitors stream.

Figure 4: Volunteers by age

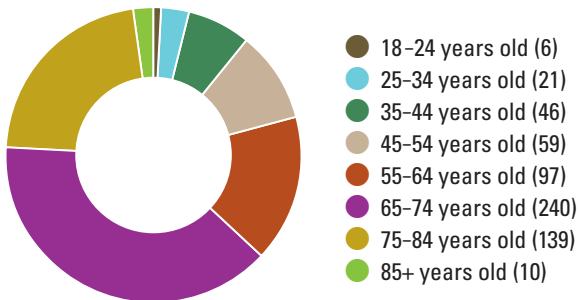
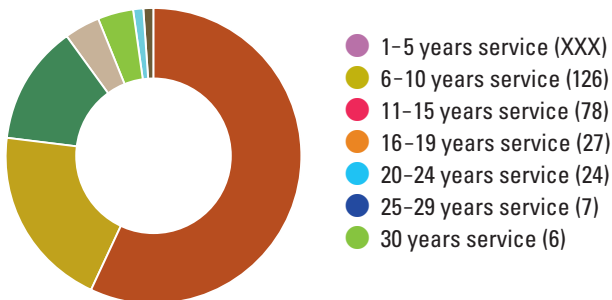


Figure 5: Volunteers by years of service



Recruitment, training and support

In the last year OPA responded to over 580 enquires from prospective volunteers and recruited 75 new volunteers across all volunteer programs.

OPA invests considerably in its volunteer base ensuring that all volunteers are adequately trained and feel confident to capably perform their role. In 2023-2024, 80 training and professional development sessions were held with over 500 volunteers in attendance. A wide range of topics were addressed including the Victorian Disability Workers Commission, Mental Health First Aid and Building Aboriginal Cultural Competency.

Community Visitors

Community Visitors are Victorian Governor in Council appointees who are empowered to make unannounced visits to supported accommodation facilities to monitor and report on the services and quality of care being provided to residents and patients. They are appointed under three separate Acts of Parliament: the *Disability Act 2006*, the *Mental Health and Wellbeing Act 2022*, and the *Supported Residential Services (Private Proprietors Act) 2010*.

In the last financial year, OPA was supported by 385 appointed Community Visitors. OPA supported an additional 85 trainee volunteers, waiting to be appointed.

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



Independent Third Person Program

Independent Third Persons (ITPs) are volunteers who provide critical human rights safeguarding support for alleged offenders, victims and witnesses who have a cognitive disability including intellectual disability, mental illness and acquired brain injury (ABI). Victoria Police are responsible for engaging an ITP when they believe the person may have a cognitive impairment.

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

Interviews

In 2023–24, the 85 ITPs attend a record 4831 interviews. This is an almost 10% increase compared to last financial year and continues the trend of roughly 10% growth in interviews for the fourth straight year. These numbers are a testimony to the dedication of ITP volunteers and to Victoria Police’s growing engagement with the program.

Figure 6: Number of ITP interviews by year

2023–24	4,831
2022–23	4,419
2021–22	3,969

Remote ITP attendance by phone or video is a key change to the program following the pandemic. Remote attendance allows for crucial safeguarding in areas, and at times, where no in-person ITP is available. This ensures equal access for any person in need of an ITP regardless of their location. Remote attendance by phone or video accounted for 1746 or 36% of interviews, this is an increase on the last financial year. The program hopes that increased recruitment in remote and key areas will reduce the reliance on remote attendance.

Location of interviews

ITPs attended interviews and procedures at 173 locations across the state including police stations, prisons, hospitals, Multidisciplinary Centres, schools and client homes. Large regional stations continue to be busiest stations for ITP use.

Figure 7: Top five police stations for ITP interviews

Mildura	413
Shepparton	362
Morwell	261
Geelong	257
Ballarat	191

First Nations overrepresentation

Aboriginal people are significantly overrepresented in the criminal justice system and therefore in the work of ITPs. In 2023–24, 29% of alleged offenders supported by an ITP were Aboriginal, 9% were victims and 10% witnesses. This is an increase in each category from the previous year. Of all ITP clients interviewed at Shepparton police station, 40% were Aboriginal, while at Mildura police station, 51% were Aboriginal.

Corrections Independent Support Officers Program

Corrections Independent Support Officers (CISOs) are experienced ITP volunteers who also volunteer in the CISO program. They support and assist prisoners with an intellectual disability during General Manager’s Disciplinary Hearings at every adult prison in Victoria. CISO volunteers explain the processes and ensure prisoners understand and can exercise their rights throughout the hearing process. Prisons have the responsibility to engage a CISO volunteer.

This year, 4 CISO volunteers attended 100 hearings at 7 prisons. This is an increase from last year and continues the steady increase since the pandemic.

Table 13: Prisons that CISO volunteers attended

Port Phillip Prison	62
Metropolitan Remand Centre	16
Melbourne Assessment Prison	7
Marnongneet Correctional Centre	5
Dame Phyllis Frost Centre	4
Ravenhall Correctional Centre	4
Loddon Prison	2
Grand Total	100

Recognition

A highlight of the last year included the celebration of 35 years of the Independent Third Person program. Since 1988, ITP volunteers have participated in over 56,000 interviews across the state.

The celebration included speeches from the Public Advocate, Nina Taylor, Parliamentary Secretary for Justice, Jo Stafford, Commander, Priority Safer Communities, and Brian Ross-Soden, a long-standing ITP of 32 years.



(L-R): Commander Jo Stafford, Brian Ross-Soden, Dr Colleen Pearce and Nina Taylor MP

OPA volunteers act in a variety of roles that while deeply rewarding can also be highly challenging. Where possible, OPA nominates volunteers for awards to ensure that their efforts are being acknowledged and recognised. In the last year, 3 of OPA's volunteers were short-listed for Volunteering Victoria Awards.

- Ros Thurrowgood, a Regional Convenor in the Community Visitor Program and tireless advocate for people with disability for over 20 years, was a finalist in the Leadership category
- Gideon Stein, a Lead Visitor in the Disability stream of the Community Visitors Program, was a finalist in the Young Volunteer category
- Pat O'Donnell, an Independent Third Person volunteer who has taken part in an extraordinary number of police interviews over the last 15 years, was a finalist in the Volunteer Impact category.

It was notable that 3 OPA volunteers were recognised by Volunteering Victoria as they received over 400 nominations for these awards.



(L-R): Gideon Stein, Ros Thurrowgood, Pat O'Donnell at Government House for the Volunteering Victoria Awards

Quality and Audit

Feedback and complaints

OPA values all feedback received, as it gives an objective view of its performance and can provide valuable prompts for review. This year, the office handled 169 matters (pieces of feedback or enquiries regarding specific matters relating to our work process), representing a 20% increase compared to the 141 matters received in 2023. Of the 169 matters received, 91 were complaints about an OPA service.

Complaints by issue type/themes

Over the last 3 years, most complaints have been about communication/consultation, accommodation and conduct.

Figure 8: Top four issues within complaints (2023-24)

Communication	33
Access to person	17
Delay	16
Accommodation	16

Communication as an issue type within complaints continues to grow. This year 38 complaints raise communication/consultation as a concern, an increase from 33 last year.

OPA is aware of and working to address these concerns in a wholistic manner including but not limited to greater emphasis on supervision and supporting staff through training so the impact of good communication is understood.

Access to represented persons decisions is the second highest raised concern and has almost doubled from 10 complaints last year to 18 complaints this year. This feedback is reflective of the complexities in this area.

The number of complaints made regarding delay has increased, with 22 complaints this year, compared to 14 for last year- the outcome of these included 5 upheld complaints and 4 partially upheld complaints. Delay includes issues such as delay in an OPA service such as the allocation of an individual guardian to a represented person, delays related to investigations, or a delay in the time taken to provide information/communication. OPA's waiting list for the appointment of a guardian or investigation officer may have contributed to the increase in complaints regarding a delay. Often complaints about delays relate to matters outside OPA's control such as the provision of NDIS funding, or services.

Of the complaints closed this year, 12 were upheld, 19 were not upheld, 10 were partially upheld, and 3 were withdrawn.

Figure 14: Complaint outcomes

Outcome	2023-24	2022-23	2021-22
Complaint – partially upheld	10	8	6
Complaint – unable to determine	9	4	1
Complaint – upheld	12	5	12
Complaint – withdrawn	3	7	8
Not applicable (informal complaints/enquiry/out of jurisdiction/compliment)	18	18	3
Not upheld	19	45	81
Review – decision varied	1	1	–

Requests for Review of Guardian's Decision

When a person disagrees with a decision of an OPA guardian, they may request a 'Statement of Reasons'. This sets out the guardian's considerations when making the decision including who was consulted, the legislative requirements of the *Guardianship and Administration Act 2019* or the *Charter of Human Rights and Responsibilities Act 2006*. If a person remains dissatisfied, they may seek a review of the decision. This year 4 requests were made for review of a guardian's decision.

Compliments

In 2022-23 OPA improved the process for recording compliments.

This year, OPA recorded 22 compliments compared to 8 last year. Of these 22 compliments, 16 were related to a guardian, 4 related to the Advice and Response Service and 2 were 'Other'.

OPA complaints to external agencies

Where appropriate OPA will take active safeguarding steps including ensuring appropriate services are in place for the people it works with.

The Public Advocate makes complaints to external agencies because of significant concern for a person with a disability who is linked to OPA either through guardianship or investigation. The significant concerns may be about the services the person receives, the quality and safety of services and supports, specific actions, misconduct or financial exploitation and abuse.

This year, the Public Advocate made 27 complaints to external agencies including to the following agencies:

- NDIS Quality and Safeguards Commission
- Independent Broad-Based Anti-Corruption Commission (IBAC)
- Department of Justice and Community Safety (The Honorary Justice Unit)
- Victorian Disability Workers Commission

OPA uses complaints in an effort to prevent an issue being repeated and experienced by others, while OPA takes immediate action to protect people it works with.

In many cases, the issues raised through these complaints trigger advocacy work, to ensure opportunities for improvements are escalated for the benefit of all Victorians with disability.

Victorian Ombudsman

The Victorian Ombudsman (VO) may conduct enquiries into an administrative action as a consequence of a complaint received, or receipt of a referred complaint or matter, or by their own motion.

This year, there were 6 enquiries from the VO. After OPA provided additional information and explanation of the matters for their consideration, all enquiries were closed by the VO.

This year, OPA requested the VO conduct a review of OPA's complaints processes and practices under section 13D of the *Ombudsman Act 1973* (Vic).

The VO made 10 recommendations. OPA accepted 8 in full and 2 in principle.

OPA training

OPA is committed to empowering and engaging its staff in learning and development opportunities that will continue to equip them with the skills necessary to achieve in their roles and contribute to the continuous improvement of OPA services for the benefit of its clients.

This year OPA had a greater focus on internal training including streamlining its Orientation and Induction Program for new staff. As part of orientation, all new staff receive training on the legal underpinnings of OPA's work, human rights principles, disability awareness and diversity and inclusion in the workplace. All staff are advised of upcoming induction sessions and can attend any of the induction sessions to refresh their understanding.

Other training provided to OPA staff included:

- Group reflective practice training, focusing on supervision in groups to promote meaningful and inclusive processes
- Charter of Human Rights and Responsibilities training, providing staff with the knowledge and skills to make Charter-compliant decisions and lead good human rights practice.
- Good complaint handling training, provided by the VO. This training was compulsory for all people managers to ensure OPA has a consistent approach to responding to and, where necessary, escalating complaints about its work.
- Managing Aggressive Behaviour
- Building Cultural Competence training with the Koorie Heritage Trust

Victorian Auditor-General's Office at OPA

In 2023-24, officers from the Victorian Auditor-General's Office (VAGO) assessed OPA's delivery of guardianship and investigation services between 2018-2022 to determine whether we promote and protect the rights and interests of the people we work with.

In May 2023 the VAGO report *Guardianship and decision-making for vulnerable adults* was tabled in parliament. This review has found some areas where OPA could be doing better and identified opportunities for improvement. While OPA's work will not change, this process has helped OPA determine ways to deliver guardianship and investigation services more efficiently and with greater engagement of represented persons, and ways to improve our documentation and reporting about what we do.

Vinny's Story

OPA received a call from a community support worker advising that Vinny, who has an OPA guardian, had been admitted to hospital.

Vinny previously had bad experiences at hospitals and is terrified of them. When talking to the workers who were with Vinny prior to his admission, it was revealed that several options that would have prevented the hospital admission were not considered. However, the worker had remained with Vinny and was actively providing comfort and reassuring him to feel safe.

After speaking to the worker and Vinny, Vinny's guardian spoke to the treating nurse and provided more information including the medical treatment decision-making authority in place. They provided advice on communicating with and engaging Vinny, including tips on how to minimise their fear of hospitals. They also provided their contact details, so discussions about any decisions to be made could take place at any time.

This preparation resulted in Vinny having a surprisingly pleasant stay in the hospital because the staff were all given information on how to engage positively with him. They were also able to provide him with distractions such as access to his favourite shows and music to make his stay more like a break than a forced stay.

Vinny's House Supervisor contacted OPA to express their gratitude for the invaluable support extended during the hospitalisation.

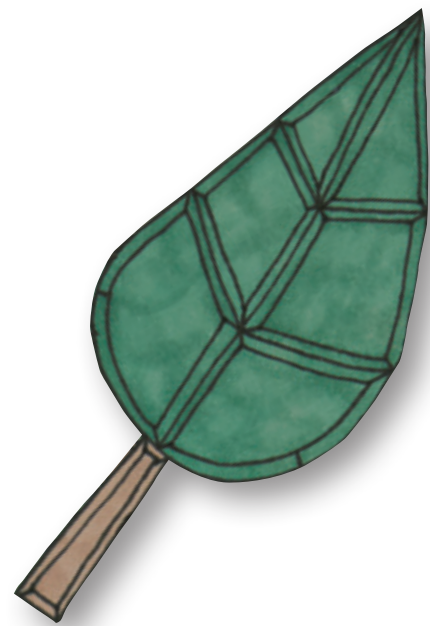
Names have been changed to protect privacy.

"Your availability and dedication ensured that crucial medical interventions were promptly authorized, facilitating the timely care he required."

"Special commendation goes to the staff who worked after hours. She demonstrated exceptional commitment by collaborating with us throughout the night. She had patience and thoroughly explained the proposed medical procedures which significantly eased the client's anxiety."

"Collaborating with your team during this challenging period was great, resulting in the delivery of timely care to the client."

House Supervisor, NDIS service provider



Appendices

Appendix A: Compliance disclosure

OPA makes decisions and advocates for people with disability and has obligations and must comply with the following statutes:

- *Guardianship and Administration Act 1986*
- *Guardianship and Administration Act 2019*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Medical Treatment Planning and Decisions Act 2016*
- *Mental Health and Wellbeing Act 2022*
- *Carers Recognition Act 2012*
- *Disability Act 2006*
- *Residential Tenancies Act 1997*
- *Severe Substance Dependence Treatment Act 2010*
- *National Disability Insurance Scheme Act 2013 (Cth).*

Disclosure of improper conduct

The purpose of the *Public Interest Disclosures Act 2012 (Vic)* is to encourage and facilitate the making of disclosures of improper conduct within public bodies and establish a system for matters to be investigated.

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

Appendix B: Comparative workforce data

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

Table 15: Paid employees by age and employment status at 30 June 2024

OPA employees by gender and age		Employment status				
Gender	Total	Age Range	Ongoing	Fixed Term	Casual	Total
Woman	97	Under 25		2		2
Man	24	25–34	13	9		22
Self-described	3	35–44	19	11	2	32
		45–54	26	10		36
		55–64	19	4	1	24
		Over 64	4		4	8
Total	124	Total	81	36	7	124

Table 16: Paid employees by gender at 30 June 2024

OPA employees by VPS level and gender					Full Time Equivalent Employees			
Classification	Man	Woman	Self-described	Total	Man	Woman	Self-described	Total
VPSG2		6	1	7		5	1	6
VPSG3	3	13		16	2.04	8.55		10.59
VPSG4	7	13	2	22	7	12.6	1.6	21.2
VPSG5	13	58		71	12.17	53.61		65.78
VPSG6		6		6		6		6
Executives	1	1		2	1	1		2
Total	24	97	3	124	22.21	86.76	2.6	111.57

Appendix C: Financial report

Comprehensive Operating Statement	Note	2024 \$000's	2023 \$000's	2022 \$000's
Continuing Operations				
Income from transactions				
Output appropriations	1	15,376	15,013	14,959
Government Grants		3,580	3,679	3,578
Other Income				
Total Income from transactions		18,957	18,692	18,537
Expenses from transactions				
Employee expenses	2	15,447	14,217	16,222
Depreciation and amortisation		70	68	82
Interest expense		5	5	8
Supplies and services	3	3,651	3,401	2,323
Total expenses from transaction		19,173	17,691	18,635
Net Result from transactions (Net operating balance)	4	-216	1,002	-98
Other economic flows included in net result				
Other gain/(loss) from other economic flows			-41	2
Total other economic flows included in net result		-	-41	2
Net Result		-216	961	-96
Comprehensive result		-216	961	-96

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Note 1: The increase in output appropriation compared to FY22-23, is due to additional funding of \$246,400 for COVID-19 and Mental Health for payroll tax.

Note 2: Salary cost increases due to full workforce recovery in FY23-24 (compared to vacancies from early retirement package in FY22-23), additional FTEs required and recruitment costs to ensure OPA commitments to provide services to Victorians.

Note 3: Non-salary also increases by \$250,000 to address operational issues and/or recommendations from VAGO audit.

Note 4: Deficit of \$216k that reflects overspend due to unavoidable costs in running OPA key programs (ITP/CVP) without adequate funding.

Appendix D: 2022-23 Complaint data

There was an error in the OPA 2022-23 Annual Report. The following text should be referred to instead of the information on page 44, under the heading 'What you tell us'.

What you tell us

In 2022-23 OPA handled 141 matters (pieces of feedback) compared to 178 last year. Last year's increase in total number of matters was the highest recorded over a 5-year period and may be attributed to the impact of the COVID-19 pandemic and restrictions on the way OPA services operated due to lockdowns.

In a majority of matters, OPA provided clarity and additional information about the legislative requirements of its work, and further information about its role and responsibilities.

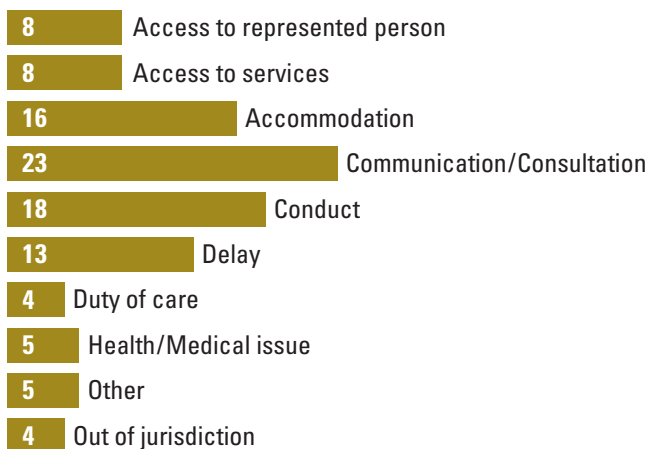
Of the 141 matters, 89 complaints were received. Key outcomes from the complaints included 7 being withdrawn, 45 not upheld, 8 partially upheld, and 5 upheld.

All complainants are informed of their right to have their complaint referred to the Victorian Ombudsman (VO), an avenue for people who may need more clarification on the way in which OPA responded to their complaint.

This year there were 9 enquiries from the VO requesting further information in relation to a matter. Upon receipt of OPA's response, the VO closed, 8 of the 9 enquiries. The final matter was closed following conciliation between the parties.

Through engaging in conciliation, OPA seeks to learn about our systems, processes and communication methods.

Figure 9: Complaints by Case Issue Group (2022-23)



Due to the complexity of some complaints, multiple Issues are included within single complaints.

Review of decisions

This year, 2 requests for a review of a guardian's decision were received – 4 fewer compared to last year.

One request for a review related to an accommodation decision. The Public Advocate accepted the recommendation made that the guardian's existing decision be confirmed.

The second review related to a guardian's accommodation decision and decision to apply to VCAT for revocation of the guardianship order. The Public Advocate accepted the reviewing officer's recommendation that the decisions be confirmed as appropriate and consistent with a guardian's duties under the *Guardianship and Administration Act 2019*.

Compliments

This year OPA received 8 compliments in relation to an OPA service or staff member.

Developing OPA's workforce – training and development

OPA is committed to providing training and development opportunities for its staff, and support performance and better understanding of staff responsibilities and the knowledge and skills needed to perform in their role.

Externally facilitated training was also offered on group reflective practice, administrative law and good decision-making, report writing and taking effective case notes, and Victorian Equal Opportunity and Human Rights Commission's Charter Capability Program.

These workshops were identified as opportunities to enhance how administrative decisions are made in response to feedback received in previous years.

Office of the Public Advocate

Level 1, 204 Lygon Street
Carlton Victoria 3053

Ph: 1300 309 337

publicadvocate.vic.gov.au

TTY: 1300 305 612

Fax: 1300 787 510

