Office of the Public Advocate

Safeguarding the rights and interests of people with disability

Submission to the Public Consultation on Nationally Consistent Approaches to Community Visitor Schemes

Discussion Paper: Strengthening Community Visitor Schemes in Australia

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September 2025

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

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1. Introduction

OPA is pleased to see the Australian Government's commitment to explore options for enhanced 'national consistency for state and territory led CVS [community visitor schemes] across Australia', as recommended by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Recommendation 11.12).

OPA has welcomed the opportunity to work with CVS in other jurisdictions in considering what enhanced national consistency should look like and how Victoria could promote this without losing established safeguarding functions. The National CVS Working Group will continue to share good practice and discuss options for change. It should play an essential role in guiding the scope of this work.

1.1 Acknowledgement

This submission was written on the land of the Wurundjeri people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all Aboriginal peoples whose social and emotional wellbeing continues to be negatively affected by discrimination, racism, child removal and other devastating ongoing effects of colonisation.

1.2 About the Office of the Public Advocate

The Public Advocate is a Victorian statutory appointee. The Office of the Public Advocate (OPA) is independent of government and government services and works to safeguard the rights and interests of people with disability.

The Public Advocate is appointed by the Governor in Council and is answerable to the Victorian State Parliament. The Public Advocate has functions under the *Guardianship and Administration Act 2019* (Vic) (GA Act), all of which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect and exploitation. To this end, OPA provides a range of critical programs for people with cognitive impairment or mental illness and those who support them, including guardianship, investigations, advocacy, advice and education.

In 2023-24, OPA received 851 new guardianship orders and 312 referrals for investigation.

OPA is supported in its advocacy work by more than 600 volunteers across three volunteer programs: the Independent Third Person Program (ITP Program) and the Corrections Independent Support Officer (CISO) Program and the Community Visitors Program.

Independent Third Persons assist persons with cognitive impairment when giving interviews and making formal statements to Victoria Police. The ITP Program is a 24 hour, 7 days a week, state-wide volunteer service operating in all police stations in Victoria.

Community Visitors are Victorian Governor in Council appointed volunteers who play a vital role in safeguarding the rights of people with disability and fostering their inclusion in the community. They 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.[3] In 2023-24, 385 Community Visitors made 3638 visits either in person or remotely, visiting 1171 sites.

A key function of the Public Advocate is to promote and facilitate public awareness and understanding about the GA Act, and any other legislation affecting persons with disability or persons who may not have decision-making capacity. To do so, OPA coordinates a community education program for professional and community audiences across Victoria on a range of topics such as the role of OPA, guardianship and administration, medical treatment decision making and enduring powers of attorney.

1.3 A human rights approach

This submission applies a human rights approach that:

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

1.4 The discussion paper

The discussion paper prepared describes the main components of current CVS and the challenges to their safeguarding efforts that have been created by the introduction of the NDIS. OPA concurs with these broad descriptions.

The paper's summary of the many reviews and recommendations made in relation to CVS over the last 6 years demonstrates widespread agreement about the safeguarding benefits of the variety of CVS considered. However, these same reviews did not agree on how best to retain and extend the benefits they identified. For example, there is notable disagreement about whether, going forward, state and territory schemes should be retained, or a new national CVS be instituted.

Tellingly, the paper does not articulate the safeguarding goals of a project for CVS national consistency. This will make it difficult to determine which CVS models best fulfil the expectations of this project. Consistency for its own sake will not necessarily benefit people with disability, especially if it undermines current state and territory-specific safeguarding regimes.

OPA's expertise with CVS at the organisational level and systemic advocacy informs our submission. OPA notes the 8 discussion questions posed, and the response below relates to

- accommodation settings
- information sharing and
- additional considerations not posed within the discussion paper.

2. Going forward

OPA suggests that the goals of national consistency be fully articulated to ensure the project achieves positive safeguarding outcomes. The goals should be consistent with the vision of *Australia's Disability Strategy 2021-2031* and fit within the Safety, Rights and Justice Outcome Area.

One way to achieve this is for state and territory governments to come together with the Australian Government to develop a National Safeguarding Framework. A comprehensive framework would articulate the role CVS play in a wider safeguarding system.

Agreement must be reached on who is responsible for ensuring safety in each part of our disability service system. Governments at both levels must also look to enhance adult safeguarding systems (for example: independent adult safeguarding bodies with own-motion investigation powers; a broader range of court and tribunal orders that can protect people without removing their decision-making rights).

CVS alone are insufficient to ensure the safety of vulnerable people even if national consistency is achieved. OPA also highlights the significant barriers faced by people with cognitive impairments, complex communication needs and/or limited informal supporters, when engaging with regulatory or safeguarding bodies. These challenges are compounded by a widespread lack of understanding

among third parties about inclusive practices, leaving many individuals unheard and unsupported. In the absence of a comprehensive safeguarding framework, these vulnerabilities are further exposed within the fragmented and multi-layered NDIS system—where navigating overlapping regulators can be especially difficult for those requiring tailored communication and support.

3. Proactive outreach

Effective safeguarding for people with disability is multi-pronged. Safeguarding encompasses:

- capacity building,
- good regulation and policy frameworks,
- robust and accessible complaints processes and responders, and
- proactive outreach.

Each type of safeguard plays a complementary role in a comprehensive safeguarding framework. Each person and their circumstances are unique and not every person with disability will need to access every level of safeguarding.

Proactive outreach is the most intensive safeguarding type. It actively seeks issues to resolve as opposed to waiting for complaints or relying on individuals to act in their own interests. This level of safeguarding is most appropriately employed with people who are experiencing high levels of situational vulnerability.[1] CVS do proactive outreach. Other examples of proactive outreach safeguarding services include the services provided by the Independent Mental Health Advocacy under the *Mental Health and Wellbeing Act 2022* (Vic).

OPA notes that as community visitors are primarily reporters and referrers of concerns, the effectiveness of any CVS depends on the existence of effective regulatory, monitoring and compliance activities and accessible complaints processes, and that these work alongside responsive systems to listen, investigate and where necessary, intervene.

3.1 Forms of proactive outreach

OPA notes the vast majority of existing CVS provide proactive outreach to people in risky settings. This 'settings-based' form of outreach is justified by the significant power imbalance between residents and service providers. These settings may constitute a 'closed environment' or residents may be hidden from the community due to social isolation. This is particularly relevant in relation to people with severe and profound intellectual disabilities, from whom the public seldom hear, and who are underrepresented by advocacy groups.[2]

The other main form of proactive outreach targets specific individuals experiencing situational vulnerability – for example, people subject to compulsory mental health treatment or children in state care. There are a couple of CVS that do this form of proactive outreach:

- in the Australian Capital Territory, CVS visit individuals living in private homes who receive specialist disability services
- in South Australia, people subject to guardianship may be visited.

[1] MacKenzie, C., Rogers W. & Dodds, S. (2014) "Introduction." In *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by C. MacKenzie, W. Rogers and S. Dodds, 1–29. New York: Oxford University Press cited in Office of the Public Advocate (2024) "Manipulation and personal autonomy: Insights from adult guardianship. Discussion paper", Manipulation and personal autonomy - Office of the Public Advocate.

[2] Araten-Bergman, T., Bigby, C. & Jackson, A. (2024) Family Perspectives on Group Home Experiences of Their Relative with Severe Intellectual Disabilities. *Journal of Intellectual Disability Research* 68 (7):717 (conference presentation)

OPA agrees that proactive outreach is an essential safeguarding tool. However, it is crucial that the project of national consistency recognises that there are two distinct types of proactive outreach safeguarding. Neither form can fully compensate for the lack of the other.

4. Achieving national consistency

OPA agrees with the many CVS reviews which recognise the safeguarding benefits that derive from proactive, settings-based models of visiting. OPA is pleased that reviews are seeking to extend these safeguards to better protect people with disability in states without proactive outreach programs for 'risky settings'.

OPA holds concerns that a project seeking national consistency might unintentionally remove safeguards from risky settings by focusing too strongly on protecting specific individuals – in this instance, NDIS participants who have been subject to financial exploitation, neglect and abuse at the hands of service providers.

If proactive outreach safeguarding under a project of national consistency was to abandon settings-based models and solely focus on 'at-risk' individuals, NDIS participants would likely be the only people in scope. This would reduce effective safeguarding coverage of non-participants or NDIS participants with less complex support needs who would remain living in extremely risky settings like Victoria's pension-level Supported Residential Services. Should there be a desire to pursue consideration of 'individuals-at-risk', this will require the development of two distinct risk-based safeguarding frameworks.

Recommendation 1

OPA recommends that a nationally consistent approach to CVS clearly define the type of safeguarding it aims to establish.

Recommendation 2

OPA recommends that CVS safeguarding models remain focused on 'risky settings' as opposed to starting with 'at-risk individuals'.

Recommendation 3

OPA recommends the establishment of national principles to guide CVS practice in specific state and territory contexts.

5. Appropriate features of CVS

CVS should not be confused with regulatory functions. Community Visitors should not undertake regulatory or auditing functions. This is because CVS should maintain a focus on promotion of human rights and focus on the wellbeing of the people who are being visited. Audit and regulatory tasks should be performed by appropriately trained and qualified professionals. Such tasks relate to the quality of service provision as delivered by a provider, whereas CVS examine the quality of service provision as expressed by the purchaser or recipient of the service, particularly by individuals who are typically unaware that they have a purchaser / provider or due to thin markets have little or no power in the relationship. In Victoria, this is done in the context of Community Visitors' statutory function. A minimum standards approach does not centre the focus of a community visitor on the wellbeing of those individuals, nor align their work to the United *Nations Convention on the Rights of Persons with Disabilities*, the *Charter of Human Rights and Responsibilities Act 2006* (Vic), engagement and communication with the individual, nor other human rights affirming frameworks.

In a well-designed safeguarding model, the Community Visitor will have the power to make an express referral where concerns are identified for relevant bodies to investigate.

Recommendation 4

OPA recommends that a national approach to CVS clearly delineate its role as separate yet complementary to regulatory functions.

5.1 Volunteer CVS

OPA recognises that CVS operate utilising both paid and volunteer resourcing. Regardless of model, appropriate levels of resourcing is required to provide professional support and training for effective CVS. As the provider of a volunteer CVS for nearly forty years, OPA has observed the following benefits of a volunteer approach:

- Alignment with the overarching approach to community inclusion as articulated in *Australia's Disability Strategy 2021–2031* and *Inclusive Victoria: state disability plan (2022–2026)*
- Community connection and social inclusion is promoted through volunteer engagement with local people with disability.
- Volunteers are independent from service provision and regulatory activities. This independence makes volunteers more likely to be trusted by residents.
- Volunteers have greater connection and understanding of local issues, particularly in rural and regional communities, providing insights and advocacy opportunities unknown to metropolitan based individuals.

6. Proactive outreach to individuals

It appears that much of the push for CVS national consistency has stemmed from concerns for the safety and wellbeing of NDIS participants: that someone independent of services needs to check in with people.

Proactive outreach to individual people with a specific risk constellation (irrespective of setting) does not currently exist for NDIS participants. A program supporting this approach could be developed.

In considering the background material on CVS reported in the consultation paper, most would likely approve of the NDIA taking a more proactive approach to participant safeguarding. In these cases, 'proactive outreach' might include the NDIA planner attending in-person planning meetings at the person's home. Decisions about which participants require more hands-on planning and review processes could similarly be determined by a risk matrix or as a response to reports of concerns by external parties (including CVS).

The National CVS Working Group or the Australian Guardianship and Administration Council are both well placed to assist the Australian Government with developing the criteria for 'flagging' an individual for more attention within NDIS policies and practices.

Recommendation 5

OPA recommends that the Department of Health, Disability and Ageing engage with the National CVS Working Group to consider approaches to improving the NDIS Participant Safeguarding policy.

7. Promoting effectiveness of CVS

In OPA's view, the 'risky settings' safeguarding model remains relevant and essential despite the safeguarding issues created for some CVS by the introduction of the NDIS.

A key issue for the risky settings model, as mentioned in the discussion paper, is the proliferation of multiple smaller group home settings. In Victoria, as at January 2025, there were 3,048 enrolled Specialist Disability Accommodation properties, with a further 2,474 unenrolled new build SDA sites, alongside 17 adult mental health services (each with multiple sub-units), 14 aged person mental health services (multiple sub-unit) and 112 registered Supported Residential Services. This is further compounded by 'SIL houses' as Victorian Community Visitors are empowered to visit a huge range of (indirectly) NDIS-funded accommodation settings, but the information about the locations of these homes is held by the NDIA alone and not shared.[3] This knowledge gap creates a safeguarding and resourcing issue, as visitors need to visit more premises.

Information sharing can mitigate these issues. If CVS that visit supported accommodation settings (at a minimum registered SDA) were to have adequate legislative recognition, the NDIA and the NDIS Quality and Safeguards Commission ('NDIS Commission') would be required to share information with CVS. Information about the location and number of residents in eligible properties would assist with planning and coverage. Ideally, CVS would be resourced to reflect this growth in eligible properties.

As CVS in various jurisdictions have different scope, systems and safeguarding goals, it will likely also be necessary for the NDIA and the NDIS Commission to develop memoranda of understanding for each jurisdiction that best leverage their respective complementary safeguarding functions to benefit those NDIS participants who are already visited. CVS differences reflect the historic development of local disability service sectors and it has not been demonstrated that this is a design flaw. Indeed, it may be a strength.

In visiting people who are NDIS participants under a risky settings model of CVS, community visitors provide a backstop in identifying issues of abuse, neglect and exploitation. This will never be a comprehensive visiting regime to all NDIS participants, but that was not and should not be the goal of a risky settings model.

Ultimately, it is in the interests of the public, the Australian Government, the NDIA and the NDIS Commission to hear when taxpayer funded services are failing to serve Australians with disability. CVS with a clear legislative basis are well placed to support this, as evidenced by exposures in Victoria since its establishment in 1987, which has safeguarded individuals and guided the human services sector in its furtherance of quality support delivery while working alongside regulatory bodies.

Recommendation 6

OPA recommends strengthening information sharing requirements between the National Disability Insurance Agency and the NDIS Quality and Safeguards Commission and CVS to enable CVS to obtain essential safeguarding information.

Recommendation 7

OPA recommends that CVS be appropriately resourced to provide effective service to undertake the role with diligence and care.

[3] The *Disability and Social Services Regulation Amendment Act 2023* became law on Tuesday 23 May 2023 and expanded the definition of visitable properties. Commencing on 1 July 2024 the amendments bought accommodation owned or leased by service providers but which is not enrolled by the NDIA as specialist disability accommodation (i.e. SIL-houses), into scope as visitable by Community Visitors. The Minister can also approve premises that they consider should be visited as can the Victorian Senior Practitioner for the purposes of providing compulsory treatment.

8. Final word

Proactive visiting to ‘risky settings’ is essential because this helps mitigate the inherent risks of supported accommodation.

CVS do not decide to visit on the basis that Person A lives there, but on the grounds that anyone who finds themselves living in this setting is faced with significant hurdles to exercising their rights.

All residents will face these barriers, irrespective of their individual risk profiles or social capital. Asserting that only some people in supported accommodation require visiting dismisses the reality of their circumstances. This is particularly true for multiple occupancy settings and for residents without informal supporters.

Any determination regarding visiting based solely on an individual NDIS participant’s personal characteristics is inappropriate. At present, a settings-based risk matrix to manage resourcing constraints of CVS is an appropriate way to proceed, and information sharing by the NDIA and the NDIS Commission will assist with developing settings-based risk matrices.