



Office of the Public Advocate

Safeguarding the rights and interests of people with disability



# Submission to the Disability Safeguards Consultation

Consultation Paper

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## **Acknowledgement of Country**

This submission was written on the land of the Wurundjeri and Boon Wurrung 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 First Nations people whose social and emotional wellbeing continues to be negatively affected by discrimination, racism, child removal and other devastating ongoing effects of colonisation.

# Recommendations

## **Recommendation 1.**

OPA recommends the project clearly state that the Framework aims to safeguard people with disability across all settings, including homes, community spaces, mainstream services, and disability-specific supports.

## **Recommendation 2.**

OPA recommends that the Framework include measures to protect people with disability in risky circumstances from violence, abuse, neglect, and exploitation, while also promoting the safety and wellbeing of all people with disability. Key components should include: capacity building; human rights-based regulation and policy; strong complaints mechanisms; independent bodies to investigate abuse reports; and proactive outreach to those in vulnerable circumstances.

## **Recommendation 3.**

OPA recommends that the Framework explicitly respond to the significant safeguarding gaps identified through submissions to the Disability Royal Commission and the findings of the NDIS Review.

## **Recommendation 4.**

OPA recommends that the Framework explicitly recognise and actively promote the role of social inclusion as a critical safeguarding measure, acknowledging its contribution to reducing isolation, mitigating risk, and enhancing the overall safety and wellbeing of people with disability.

## **Recommendation 5.**

OPA recommends that all disability-specific systems, including the NDIS, implement policies, practices, and guidance that accommodate individuals with significant decision-making disability, while ensuring that their decision-making rights are preserved and not unnecessarily restricted.

## **Recommendation 6.**

OPA recommends that the National Disability Insurance Agency develop safeguards to address and mitigate the risks posed to participant autonomy and wellbeing by 'manipulated preferences'.

## **Recommendation 7.**

OPA recommends that the Framework recognises the importance of proactive outreach to the safety of people with disability by leveraging existing Community Visitor Schemes and developing new models of proactive outreach to support people experiencing risky circumstances in private homes.

## **Recommendation 8.**

OPA recommends that the Australian Government act to provide Community Visitor Schemes a clear role in this Framework ensuring operational certainty for at least 5 years.

## **Recommendation 9.**

OPA recommends that the Framework embed adult safeguarding functions in every jurisdiction to enable referral, investigation and response to reports of abuse.

## **Recommendation 10.**

OPA recommends that the Framework promote the development of clear information sharing agreements between state, territory and federal safeguarding bodies (including the NDIA) to enable effective safeguarding of people with disability.

# 1. 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 has functions under the *Guardianship and Administration Act 2019* (Vic), the *Disability Act 2006* (Vic) and the *Medical Treatment Planning and Decisions Act 2016* (Vic) which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect, and exploitation. To fulfil these functions OPA provides a range of critical services for people with cognitive impairment or mental illness, including guardianship, investigations, advocacy, medical treatment decisions, advice and education. In 2024-25, OPA was involved in 879 new guardianship matters, 280 investigations, 401 cases requiring advocacy, and 501 Medical Treatment Planning and Decisions Act matters. OPA runs an Advice Service which provided 9,149 instances of advice or information during 2024-2025.<sup>1</sup>

OPA is supported in its advocacy work by more than 500 volunteers across three volunteer programs: the Independent Third Person program (ITP Program), the Corrections Independent Support Officer (CISO) program and the Community Visitors program.

Independent Third Persons attend Victoria Police procedures to provide essential human rights support to alleged offenders, offenders, victims, and witnesses with cognitive disabilities, including intellectual disabilities, mental illness, and acquired brain injury. The ITP program is a 24 hour, 7 days a week, state-wide volunteer service servicing all police stations in Victoria. In 2024-25, ITP volunteers attended a total of 5,388 police procedures. CISO volunteers are experienced ITPs who support prisoners with an intellectual disability at Victorian prisons and/or remand centres during General Manager's Disciplinary Hearings. In 2024-25, CISO volunteers supported prisoners in 128 disciplinary hearings across 6 prisons.

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.<sup>2</sup> In 2024-25, 329 Community Visitors made 3223 visits either in person or remotely across 1105 facilities.<sup>3</sup>

A key function of the Public Advocate is to promote and facilitate public awareness and understanding about the Guardianship and Administration Act and 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. OPA's Lived Experience Advisory Committee comprises experienced self-advocates with different disabilities, expertise and interests and they meet monthly to provide input into OPA projects, programs and systemic advocacy.

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<sup>1</sup> OPA Annual Report 2024–25 (OPA 2025)

<sup>2</sup> The *Disability Act 2006* (Vic), the *Mental Health Act 2014* (Vic), and the *Supported Residential Services (Community Visitors) Act 2010* (Vic).

<sup>3</sup> Community Visitors Annual Report 2024–25 (OPA 2025)

## 2. 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 in, 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 being due to 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 lead a dignified and flourishing life.

## 3. Overview

OPA welcomes the opportunity to comment and contribute to the development of a Disability Support Quality and Safeguarding Framework, which will in time be accompanied by a Disability Support Ecosystem Safeguarding Strategy.

OPA has long extolled the need for a comprehensive National Adult Safeguarding Framework. OPA works with the people being failed by our current systems and safety nets and so is well positioned to comment on what a National Adult Safeguarding Framework needs to include.

OPA suggests that mixed messaging in the consultation paper along with the proposed name of this safeguarding framework has created unintended confusion about the intended scope of the framework. The consultation paper has put a strong focus on service and supports quality, which OPA agrees plays a crucial role in safeguarding people accessing those services, but it does not mention any of the non-service-related factors which OPA sees as essential components of a comprehensive national disability safeguarding framework.

This submission will provide comment and recommendations about the safeguarding components identified in this paper as well as on those crucial missing pieces. OPA's focus is on addressing the safeguarding gaps and opportunities for human rights enhanced policies and processes as experienced by people with significant decision-making disability.

OPA notes that the Disability Royal Commission called for the development of a National Adult Safeguarding Framework (Recommendation 11.1) which properly extends beyond the quality and safety of disability services to enhancing the safety and wellbeing of all people with disability in Australia.

### **Recommendation 1.**

**OPA recommends the project clearly state that the Framework aims to safeguard people with disability across all settings, including homes, community spaces, mainstream services, and disability-specific supports.**

## 4. A safeguarding framework

The goal of a safeguarding framework is to protect people from harm in a rights promoting way, where any proposed restrictions on a person's human rights for the purposes of protection are proportionate, least restrictive and justifiable.

Broadly, OPA sees a good safeguarding framework as satisfying two purposes:

- promoting the safety and wellbeing of everyone with disability
- ensuring people with disability who are in risky circumstances<sup>4</sup> are protected from violence, abuse, neglect and exploitation.

As such, 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
- independent bodies to investigate and respond to reports of violence, abuse, neglect and exploitation, 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.

### **Recommendation 2.**

**OPA recommends that the Framework include measures to protect people with disability in risky circumstances from violence, abuse, neglect, and exploitation, while also promoting the safety and wellbeing of all people with disability. Key components should include: capacity building; human rights-based regulation and policy; strong complaints mechanisms; independent bodies to investigate abuse reports; and proactive outreach to those in vulnerable circumstances.**

OPA's experience is that:

- all people with disability will benefit from opportunities for capacity building, social inclusion and human rights protecting laws
- some people with disability will benefit from human rights protecting regulatory systems and policies (as are relevant to their lives)
- there is a small percentage of people who experience situations of significant power imbalance (or who are not receiving any supports) who will benefit from proactive outreach.

OPA views proactive outreach (such as that provided by many Community Visitor Schemes) as an essential safeguard and as especially relevant to people with disability who are socially isolated and who have decision-making disabilities. (See 'Proactive outreach – not waiting for complaints' section below.)

OPA's experience suggest that the people who are frequently disadvantaged by the current disability services and safeguarding systems are those people:

- outside of the disability service system,
- in dysfunctional family circumstances, or
- exposed to gaps in service responsibilities, for whom there are insufficient supports are available.

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<sup>4</sup> OPA (2024), "Manipulation and personal autonomy: Insights from adult guardianship. Discussion paper", pp 6-7.

**Recommendation 3.**

**OPA recommends that the Framework explicitly respond to the significant safeguarding gaps identified through submissions to the Disability Royal Commission and the findings of the NDIS Review.**

## **5. The importance of social inclusion to safety and wellbeing**

The framework should include greater acknowledgement of the role social inclusion plays in safety, empowerment and a flourishing life for the individual. It should also promote the benefits to society of codesign practices and people with disability working in and contributing to continuous improvement of systems and services.

**Recommendation 4. OPA recommends that the Framework explicitly recognise and actively promote the role of social inclusion as a critical safeguarding measure, acknowledging its contribution to reducing isolation, mitigating risk, and enhancing the overall safety and wellbeing of people with disability.**

### **5.1 OPA's Lived Experience Advisory Committee feedback**

OPA has sought to learn from and amplify the voice of lived experience of disability through the establishment of a Lived Experience Advisory Committee. Committee members are casual OPA employees and experienced self-advocates with diverse disabilities, backgrounds, and interests. To inform OPA's response to the consultation paper, the Committee held a workshop guided by Parts 2 and 3 of the Easy Read survey, providing feedback on four key topic areas.

#### ***Safeguards and quality***

- We all have different needs, and we have a right to be empowered to meet our goals.
- It's important that we are acknowledged as human beings.
- Since we're human, our human rights should be recognised, respected and followed through in practical terms, not just in theory.
- Quality services need to learn from the person.
- Really poor service provision can happen when the service does their own thing without consulting the person with disability
- Quality services should include respect for individual needs, transparency (including not talking behind someone's back) and accessibility.
- Quality services:
  - need to be legal and honest
  - free from racism and other types of discrimination
  - have integrity – meaning that if a service states that they are going to do something, they need to follow through.
- Quality services need to include First Nations people with disability, people with disability from multicultural and multifaith communities, people with disability from the LGBTIQ+ community, people with disability of all ages and people with all different types of disability, whether they're visible or invisible. Services need to learn from the person.

- It's important to have someone who speaks in the person's language, or mode of communication, recognising different communication styles (whether someone needs communication devices and Easy Read or plain language).

### ***Understanding your rights and how to use them***

- Rights should be actually spoken about.
- It is about educating people with disability and the service system about implementing human rights into service provision.
- When people with disability educate on human rights then the audience is compelled to listen, understand and gain valuable personal insight.

### ***Person centred supports***

- Don't look at the person's disability, look at them.
- It's important:
  - to accept that you are providing services to PEOPLE
  - to communicate
  - to ask what the person would like
  - to listen to the response
  - to act on that.
  - This is important because:
    - it builds rapport
    - meets individual needs.

### ***How people with disability can make things better through social inclusion***

- People with disability who are employed have the opportunity to use their skills, strengths, abilities and lived experience.
- It's important that people with disability are involved because who will you get better information from than the person themselves?!
- Employment of people with disability represents authentic service provision.
- Employing people with disability leads to a diverse and inclusive workforce and society.
- In the Framework it is important to have a general statement about what inclusion means for people with disability.
- Inclusion means:
  - taking action
  - being listened to
  - being respected
  - being included
  - taking part in all aspects of society
  - having the opportunity to contribute

- being empowered to achieve individual life goals without discrimination or stereotyping.

## **6. Scope of proposed safeguarding components**

OPA supports the inclusion of each of these proposed safeguarding components in the Framework. However, our frontline experience across a variety of adult safeguarding realms informs OPA's view that, while necessary, these components alone will not provide sufficient protection from violence, abuse, exploitation and neglect for all people with disability.

OPA staff work closely with people with significant decision-making disability and see safeguarding issues impacting this group of people that few are aware of. OPA is concerned that if this framework does not fully consider the experiences and circumstances of people with significant decision-making disability who do not have informal supporters, it will fail to protect those most likely to experience harm.

OPA's view is that a disability supports safeguarding framework needs more elements than are mentioned in the consultation paper, and, at the very least, close consideration must be given to how to address the current safeguarding gaps that are failing to protect people with disability while we work towards our vision of full inclusion.

## **7. Additional safeguarding components specific to people with significant decision-making disability**

The following elements of an effective safeguarding framework have been identified by OPA as protective of the rights of people with significant decision-making disability. These features are especially relevant to ensuring the safety and human rights of people living in circumstances characterised by significant power imbalance.

An effective safeguarding framework needs to have systems that:

- Clearly articulate what 'choice and control' looks like for people with significant decision-making disability
- Accommodate people who require support with decision-making (including those people with a significant decision-making disability) without unnecessarily removing their right to make their own decisions
- Assign accountability for the safety and wellbeing of people with significant decision-making disability who do not have informal supporters to a lead agency (case manager)
- Can recognise and mitigate the human rights impacts of 'manipulated preferences'
- Prioritise proactive outreach to people living in 'risky' situations (for example, by Community Visitor schemes or the NDIA)
- Ensure that any protective interventions carried out are justified, proportionate and the least restrictive in the circumstances.

### **7.1 'Choice and control' for people with significant decision-making disability**

There is a desperate need for nuanced guidance from the NDIA and the NDIS Commission about what 'choice and control' looks like for people with significant decision-making disability. OPA's experience is that this group of participants' 'choice and control' is often undermined by current policies and practices.

For example, where a NDIS participant lacks decision-making capacity and does not have a 'nominee' in place, adult guardianship orders may be sought even in circumstances where the participant is supported by a trusted and experienced team who could otherwise assist with service-related decision-making. In this situation, the participant's right to make their own decisions is being summarily removed by a guardianship order. In OPA's experience, this can occur to meet services' and the NDIA's preference for a legal decision-maker where informal agreements with the supporting team could suffice.

OPA views 'choice and control' by a person with significant decision-making disability as best understood as person-centred support, whether that is by a trusted family member or a paid service provider. OPA advocates policies and safeguards be modified to recognise this interpretation of 'choice and control'. The alternative is what we have at the moment – where 'choice and control' is very literally interpreted by the NDIA and services as the 'right to make the decision'. This interpretation creates a clear divide between people 'with' and 'without' decision-making capacity: in which one group experiences 'choice and control' while the other group may have their right to choose unnecessarily removed by the appointment of a substitute decision-maker.

A particularly troubling example of this divide is evident in PACE, the NDIS invoice payment system. OPA is aware that PACE requires invoices to be signed-off by a legal decision-maker for people who receive Specialist Disability Accommodation (SDA), Supported Independent Living (SIL) or Behaviour Support Practitioner funding in order to be paid. OPA is concerned this requirement will lead to the unnecessary (and ongoing) use of guardianship for people without a nominee (and who are not considered to have decision-making capacity).

#### **Recommendation 5.**

**OPA recommends that all disability-specific systems, including the NDIS, implement policies, practices, and guidance that accommodate individuals with significant decision-making disability, while ensuring that their decision-making rights are preserved and not unnecessarily restricted.**

Options that could advance this goal may include more accessible and available supported decision-making services and policies (potentially laws) that enable recognition of decisions made using a supported decision-making paradigm.

## **7.2 'Manipulated preferences' and participant autonomy**

Another way a person's autonomy can be undermined is where a person (for example, an NDIS participant) has been unduly influenced to voice a preference for their lives (for example, a change in service provider). This amounts to a 'manipulated preference.' OPA regularly sees this problem with the NDIA's current practices around promoting participant 'choice and control,' noting that NDIA do not make enquiries to identify or rule out that undue influence is at play.

OPA is concerned that these 'manipulated preferences' do not represent the participant 'choice and control' envisaged by the NDIS Act.

OPA acknowledges that promoting the human rights of people who are being coerced or manipulated is extremely difficult work. However, it is essential that the NDIA, the NDIS Commission and individual disability service providers work on promoting a person's true autonomy as opposed to unquestioningly implementing a 'manipulated preference'.

OPA explored this topic in its paper [\*Manipulation and personal autonomy: Insights from adult guardianship.\*](#)

**Recommendation 6.**

**OPA recommends that the National Disability Insurance Agency develop safeguards to address and mitigate the risks posed to participant autonomy and wellbeing by ‘manipulated preferences’.**

### **7.3 Proactive outreach – not waiting for complaints**

OPA views proactive outreach as an essential element of any safeguarding framework because there will always be people who cannot complain about the circumstances they find themselves in. In OPA’s experience it usually stems from a power imbalance and the attendant risks of complaining about a support service you are heavily reliant on, but it may also arise because of an unaddressed communication support need.

**Recommendation 7.**

**OPA recommends that the Framework recognises the importance of proactive outreach to the safety of people with disability by leveraging existing Community Visitor Schemes and developing new models of proactive outreach to support people experiencing risky circumstances in private homes.**

OPA’s Community Visitors program is an example of a proactive outreach safeguard. Indeed, this type of safeguard is so highly valued that the Australian Government are seeking to leverage the benefits of Community Visitor Schemes across the country in their project pursuing national consistency for such schemes. OPA’s views on how to best leverage the successes of such schemes are set out in its September 2025 submission to the consultation [Nationally Consistent Approaches to Community Visitor Schemes - Office of the Public Advocate](#).

**Recommendation 8.**

**OPA recommends that the Australian Government act to provide Community Visitor Schemes a clear role in this Framework ensuring operational certainty for at least 5 years.**

OPA agrees that complaints-based safeguarding systems are not sufficient to protect people with disability living in risky settings.

However, OPA does not concur with views that Community Visitor Schemes are well-placed to visit private homes. Instead, to provide proactive outreach safeguarding to people in similar situations to Ann-Marie Smith, OPA recommends that the NDIA take a more hands-on approach to overseeing the implementation of their NDIS plans. More detail on OPA’s recommendations for participant safeguarding are available in its 2023 [Submission to the NDIS Participant Safeguarding Proposals Paper - Office of the Public Advocate](#).

### **7.4 Need for an Independent Adult Safeguarding Body in every jurisdiction**

No disability safeguarding framework would be complete without the inclusion of independent Adult Safeguarding Bodies to investigate and respond to reports of violence, abuse, neglect or exploitation of ‘at-risk’ adults. This function is required to fill the gap in safeguarding where a situation is concerning and protective action is required. For example, this may be the case where the situation is concerning but does not meet the threshold for criminal charges, there are barriers to reporting a crime, there are barriers to a successful criminal prosecution, or protective action could not be quickly achieved through the criminal justice process.

Some jurisdictions have already implemented such functions, for example, in New South Wales the Aging and Disability Commission investigates and responds to reports of concerns of abuse, neglect and exploitation of older people and adults with disability in their family, home or community.

**Recommendation 9.**

**OPA recommends that the Framework embed adult safeguarding functions in every jurisdiction to enable referral, investigation and response to reports of abuse.**

## **8. Information sharing**

Effective safeguarding requires collaboration between national, state and territory safeguarding bodies. OPA recognises that safeguarding the most 'at-risk' people with disability will not be achieved by any one body alone, due to the intersectional nature of issues facing this group of people.

Solid relationships between state and federal actors are essential and cannot be achieved without clear information sharing agreements. OPA suggests a safeguarding map be developed to support these agreements and identify current safeguarding gaps.

OPA's experience suggests that the NDIA approach to participant privacy is weighted toward not providing information, even to other agencies with legislative safeguarding obligations. This information barrier may result in poor outcomes for the person with disability, who may be subjected either to more or less intervention in their lives than was necessary to prevent violence, neglect or exploitation.

**Recommendation 10.**

**OPA recommends that the Framework promote the development of clear information sharing agreements between state, territory and federal safeguarding bodies (including the NDIA) to enable effective safeguarding of people with disability.**

OPA is aware that privacy requirements mean independent disability advocates and community members face difficulties when they raise concerns in relation to the quality of life or wellbeing of people with cognitive disability.

While OPA agrees it is not necessarily appropriate to divulge a participant's personal information to the concerned party if they have not been given formal consent to speak on the participant's behalf, OPA is concerned that information barriers can compromise the safety of people with significant cognitive disability who cannot provide formal consent to their advocates and informal supporters. Further, in rare cases these barriers may even lead to the appointment of a guardian, as currently that is sometimes the only way to obtain sufficient information about a person's circumstances to address the raised concerns.

Where concerns are raised about a person with significant cognitive disability with active and engaged informal supports, engagement with advocates and informal supporters of people who do not have a guardian can be utilised as a safeguarding opportunity. Guardianship is restrictive of a person's autonomy and should be looked to only after attempting to address safeguarding or quality of life concerns by all less restrictive alternatives— including engaging with available support networks.

## **9. Conclusion**

OPA is keen to contribute further to the development of this Framework and see it as a long absent piece in improving the safety, wellbeing and opportunities of Australians with disability.

OPA strongly supports this project's focus on centring the perspectives and voices of people with disability.

Without detracting from this focus, OPA's experiences as a body with multiple safeguarding responsibilities and a particular focus on the systemic and practical concerns of people with decision-making disability make it uniquely placed to provide commentary on the systemic failures currently impacting people with significant cognitive impairment and decision-making disability.

Those working to build this framework must ensure it reflects the full scope of experiences within the disability community. This includes those people who remain effectively voiceless due to extreme social disadvantage, communication barriers and disempowering legal frameworks. OPA cannot provide access to people's voices, but it can provide insights into the multitude of ways our social and disability systems fail to accommodate the needs of people with decision-making disability and prevent harm.

In work on safeguarding, the needs of this group should always be front of mind.