



Office of the Public Advocate

Safeguarding the rights and interests of people with disability



# Submission to the Family Violence Reform Implementation Monitor

Monitoring the Family Violence Reforms

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## Abbreviations

Convention	United Nations <i>Convention on the Rights of Persons with Disabilities</i>
DHHS	Department of Health and Human Services
FVPA	<i>Family Violence Protection Act 2008 (Vic)</i>
ITP	Independent Third Person Program
MARAM	Multi Agency Risk Assessment and Management Framework
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
Royal Commission	Royal Commission into Family Violence
VCAT	Victorian Civil and Administrative Tribunal

# 1. About the Office of the Public Advocate

The Office of the Public Advocate (OPA) is a Victorian statutory office, independent of government and government services that works to safeguard the rights and interests of people with disability.<sup>1</sup> The Public Advocate is appointed by the Governor in Council and is answerable to Parliament.

OPA provides a number of services including the provision of guardianship, advocacy, and investigation services to people with cognitive impairment or mental illness. Under the *Guardianship and Administration Act 2019* (Vic), guardianship is the appointment of a person ('a guardian') to make decisions for an adult with a disability (the 'represented person') when that person is unable to do so because they lack decision-making capacity in relation to the personal matter for which the guardianship order is sought. Appointments of a guardian are made by the Victorian Civil and Administrative Tribunal (VCAT). VCAT may appoint the Public Advocate as a guardian of last resort.<sup>2</sup> The role of the guardian is to act as a substitute decision-maker and to protect and promote the human rights and dignity of the represented person. Where they can be determined, the guardian makes decisions based on the will and preferences of the represented person and, where they are unable to be determined, in a manner to promote the personal and social wellbeing of the person. The will and preferences of the represented person can only be overridden if it is necessary to do so to prevent serious harm to the represented person. Therefore, the role of the guardian is to both promote the will and preferences and to safeguard the personal and social wellbeing, of the represented person.

In 2018-19, OPA was involved in 1,823 guardianship matters (978 which were new), 404 investigations and 258 cases requiring advocacy.<sup>3</sup> About 49 per cent of OPA's new guardianship clients were over 65 years of age. More than half of OPA guardianship clients under 65 years of age were National Disability Insurance Scheme (NDIS) participants (58 per cent).<sup>4</sup>

Under the *Guardianship and Administration Act 2019* (Vic), OPA is also required to promote and facilitate informed public awareness and understanding about guardianship and administration laws and any other legislation dealing with or affecting persons with disability. OPA does this by providing an Advice and Education Service that offers information and advice on a diverse range of topics affecting people with disability. Last financial year, the advice service answered 13,344 calls, 29 per cent of which related to powers of attorney and almost one in ten related to neglect and abuse (nine per cent). OPA also coordinates a Community Education Program where staff address both professional and community audiences across Victoria on a range of topics including the role of OPA, guardianship and administration, enduring powers of attorney, and medical decision making.

OPA's work is supported by more than 700 volunteers across four volunteer programs: The Community Visitors Program, the Community Guardian Program and the Independent Third Person Program. The Independent Third Person (ITP) Program provides volunteers who are available 24/7 to attend police interviews where the alleged offender, victim or witness have a cognitive impairment or mental illness. The ITP's role is to ensure that the person being interviewed understand their rights and can communicate sufficiently to be interviewed.

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<sup>1</sup> *Guardianship and Administration Act 2019* (Vic) pt 3.

<sup>2</sup> *Guardianship and Administration Act 2019* (Vic) pt 2.

<sup>3</sup> Office of the Public Advocate (Vic), *Annual Report 2018-19* (2019) 9.

<sup>4</sup> OPA Internal data.

## 2. About this submission

OPA welcomes the opportunity to contribute to the Family Violence Implementation Monitor – Monitoring the Implementation of the Family Violence Reforms.

This submission applies a human rights approach that:

- holds that all people with disabilities have the right to enjoy equality of opportunity and to effectively participate in, and be fully included in, society
- recognises that the majority of challenges experienced by people with disabilities are a result of disabling systems and environments, rather than being due to an inherent 'lack' in the individual
- sees 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 dignifying and flourishing life.

## 3. How has the family violence service system changed since the Royal Commission?

OPA has direct experience with Victoria Police in its work to implement recommendation 155, namely 'to scope options for a trial of a dedicated family violence and elder abuse response team in one Victoria Police local service area. The team should have capacity to investigate financial abuse'. This trial is now underway. OPA sits on the advisory committee for this project, which is being developed in consultation with key stakeholders and has the potential to make a significant difference to the response by Victoria police to instances of financial elder abuse. OPA commends Victoria Police on its work to date in response to this recommendation.

## 4. What is still required in the family violence system?

The Victorian government has implemented or partially implemented many of the recommendations made by the Royal Commission into Family Violence (Royal Commission) which is a tremendous achievement. The following comments relate to recommendations that may still be in the process of implementation and in those circumstances, are intended to inform the further work to fully implement these measures.

### **Multi-Agency Risk Assessment and Management Framework**

The first recommendation made by the Royal Commission was that:

*the Victorian Government review and begin implementing the revised Family Violence Risk Assessment and Risk Management Framework (known as the Common Risk Assessment Framework, or the CRAF) [by 31 December 2017] in order to deliver a comprehensive framework that sets minimum standards and roles and responsibilities for screening, risk assessment, risk management, information sharing and referral throughout Victorian agencies. The revised framework should incorporate: a rating and/or weighting of risk factors to identify the risk of family violence as low, medium or high evidence-based risk indicators that are specific to children comprehensive practice guidance. The framework should also reflect the needs of the diverse range of family violence victims and perpetrators, among them older people, people with disabilities, and people from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and lesbian, gay, bisexual, transgender and intersex communities.*

Significant work has been undertaken to develop the new Multi-Agency Risk Assessment and Management (MARAM) framework. It is critical that the framework reflect the needs of the diverse range of family violence victims and perpetrators, including amongst others, older people and people with disabilities.

While elder abuse is often a form of family violence, the drivers of this form of abuse are often different to the drivers of intimate partner violence. Ageism is a significant contributing factor, which in combination with gender inequality renders older women particularly vulnerable to abuse. Furthermore, men can be the victims of elder abuse, and women are more likely to perpetrate elder abuse than intimate partner violence.

Similarly, in relation to people with disability, ableist attitudes can, together with other factors such as the reliance on others for care, contribute to the higher incidence of abuse amongst people with disability. These differing underlying drivers and risk factors must be taken into account to ensure that the Framework enables an accurate assessment of risk in all cases.

The primary tools and templates largely reflect the dynamics and drivers of intimate partner violence against younger women and their children. Guidance in relation to the presentation of risk factors across particular groups in the community is contained in Appendix 13. OPA notes that the Department of Health and Human Services (DHHS) has scheduled consultations this month with stakeholders, including OPA, regarding the development of a similar resource for agencies and staff working with perpetrators of violence. These documents are important to ensure an appropriate response to violence in all circumstances. The challenge will be to ensure that questions specific to diverse communities are incorporated into screening tools developed by agencies.

## **Workforce training**

Recommendation 3 provided that the Victorian Government implement the MARAM Framework and develop a sustained workforce strategy including for priority sectors such as aged care and disability workers.

Similarly, recommendation 172 provided that the Victorian Government fund training and education programs for disability workers—including residential workers, home and community care workers, interpreters and communication assistants and attendant carers—to encourage identification and reporting of family violence among people with disabilities [within two years].

The Victorian Government has reported that Women with Disabilities Victoria has been funded to deliver professional development programs and strengthen the capacity of workers in the disability sector to prevent violence against women in disability settings. Training has been delivered to 100 staff and executives of disability services over seven workshops. Women with Disabilities Victoria has also been funded to help improve understanding of the National Disability Insurance Scheme (NDIS) in the family violence sector, in collaboration with Family Safety Victoria. The work had a forecast implementation date of 31 March 2020.<sup>5</sup>

OPA also notes that the Victorian Government is establishing a registration and accreditation scheme for Victoria's disability workforce, and that opportunities to embed family violence training in the disability workforce are being considered in this context. Similarly, a course in identifying and responding to family violence risk, aligned with the MARAM framework, has been accredited and will be delivered from this year. OPA notes the Victorian Disability

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<sup>5</sup> Victorian Government website, *Family violence recommendations, Fund training and education programs for disability workers* <https://www.vic.gov.au/family-violence-recommendations/fund-training-and-education-programs-disability-workers>

Worker Commission now takes complaints and the voluntary registration scheme starts next July.

In 2019, OPA released a report on violence in group homes titled *"I'm too scared to come out of my room": Preventing and responding to violence and abuse between co-residents in group homes*.<sup>6</sup> Notwithstanding the good work described above, the report argues that many disability services staff are unfamiliar with how to identify and respond appropriately to family violence. All disability services staff should undertake professional development to build the sector's capacity to identify family violence and in particular, house managers should undergo training on managing family violence in disability residential settings. OPA strongly supports the initiatives undertaken by the Victorian Government to date. However, in order to ensure that all disability workers receive professional development on family violence, and to satisfy the recommendation for a 'sustained' strategy, it is critical that the Government fund ongoing family violence training and development for disability services staff.

In addition to this, family violence workers are under resourced and family violence services are generally inaccessible for people with a disability. It is also imperative that family violence workers receive training on disability awareness, together with training on the disability service sector, as a matter of urgency.

### **Accessibility of family violence services**

Recommendation 178 calls on the Victorian Government to extend eligibility for the Victorian Disability Family Violence Crisis Response (the Initiative) to people with disabilities who have experienced family violence who are not eligible for services under the *Disability Act 2006* (Vic). The Victorian Government has reported that access to the Initiative has been broadened in line with this recommendation, and additional funding has been provided to meet any increase in demand as a result of the extended eligibility.

The Victorian Government reports that it is working with the National Disability Insurance Agency (NDIA). Practice guidelines have been developed to support family violence services and NDIS providers to work together to support shared clients. The guidelines include advice to support people experiencing family violence, and provide information on how funding with a participant's NDIS plan can be used flexibly during a crisis.

Additional funding to expand access to family violence flexible support packages was provided in 2016-17 to improve access for people from diverse communities. Safe Steps in collaboration with Women with Disabilities Victoria has also received funding to 'guide the development of a strengthened approach to addressing the needs of family violence victims who have a disability'.<sup>7</sup>

Recommendation 176 made by the Royal Commission is that DHHS review the funding model for crisis supported accommodation to remove barriers for women and children with disabilities [within 12 months]. Similarly, recommendation 177 requires the Victorian Government, in phasing out communal refuges, to ensure that replacement accommodation

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<sup>6</sup> Office of the Public Advocate, *"I'm too scared to come out of my room", Preventing and responding to violence and abuse between co-residents in group homes* (2019) 9.

<sup>7</sup> Victorian Government website, *Family violence recommendations, Extend eligibility for the Victorian Disability Family Violence Crisis Response* <<https://www.vic.gov.au/family-violence-recommendations/extend-eligibility-victorian-disability-family-violence-crisis>>.

contains disability-accessible units (universal design), where carers can be accommodated as needed and adaptations for children with disabilities are made [within five years].

The Victorian Government reports that there are a number of initiatives underway to improve access to, and support provided in refuges and crisis supported accommodation. Concurrently, the specialist family violence case management service has been reviewed.<sup>8</sup> In 2019-20 construction began on new core and cluster facilities that will seek to respond to the needs of women and children with disabilities. The forecast implementation date is 31 December 2021.<sup>9</sup>

While the family violence sector is becoming more responsive to the needs of people with disability as a result of these recent initiatives, and the review of contractual arrangements for crisis supported accommodation to remove barriers for particular groups including women and children with disabilities, anecdotal evidence suggests that it does not have the capacity to respond to the unique and complex needs of residents in group home settings. For example, disability housing options are generally foreign to family violence staff, and, as a result, those staff may be unaware of the level or risk associated with various options.

Funds that are available to support women fleeing violence are inadequate to provide for disability supports for a woman with disability. Notwithstanding the significant funding to implement all 227 recommendations made by the Royal Commission, the sector remains under pressure on the ground and is not responsive to the needs of people with disability, particularly those living in group home settings. For many women who experience violence in a group home, there is simply nowhere else to go. OPA's "*I'm too scared to come out of my room*" report went into detail about the systemic barriers that limit alternatives for women in group homes.<sup>10</sup>

As noted above, the family violence sector should be funded to ensure that all workers undertake disability awareness training, and where relevant, training on the disability services landscape, to ensure that services are accessible to, and meet the needs of people with a disability.<sup>11</sup>

## Accessing justice

The Royal Commission made a number of recommendations in relation to training of judicial officers. One such recommendation relates to training on the application of section 31 of the *Evidence Act 2008* (Vic), which allows courts to make adjustments to the way people with disabilities may be questioned and give evidence.

Other recommendations relate to training judicial officers in relation to family violence (see recommendations 120, 175 and 216). The Judicial College of Victoria has undertaken an enormous amount of work to develop a Disability Bench Book and to deliver training to judicial officers across all Victorian courts. Resources about family violence including the

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<sup>8</sup> Victorian Government website, *Family violence recommendations, Remove barriers to crisis supported accommodation for women and children with disabilities* <https://www.vic.gov.au/family-violence-recommendations/remove-barriers-crisis-supported-accommodation-women-and-children>

<sup>9</sup> Victorian Government website, *Family violence recommendations. Ensure accommodation services contain disability-accessible units* <https://www.vic.gov.au/family-violence-recommendations/ensure-accommodation-services-contain-disability-accessible-units>

<sup>10</sup> Office of the Public Advocate, *I'm too scared to come out of my room, Preventing and responding to violence and abuse between co-residents in group homes* (2019) 66 – 69.

<sup>11</sup> *Ibid* 68.

Disability Bench Book are available to the judiciary and the public on the Judicial College of Victoria website.<sup>12</sup>

Professional development for judicial officers on disability awareness and family violence is critical. However, it is also critical that all justice staff are appropriately skilled in these areas. The Victorian Government should fund mandatory disability awareness training for all justice staff to enable them to fulfil their obligations under the United Nations' *Convention on the Rights of Persons with Disabilities* (Convention). The training should be developed in consultation with people with disability.

## 5. General Comments

The following comments relate to matters that are not the subject of a recommendation of the Royal Commission, but that OPA considers must be addressed in order to ensure that people with a disability are able to access family violence responses and services.

### **Amend the *Family Violence Protection Act 2008* (Vic)**

While protective orders are not considered the preferred response to violence in group homes, it is important that residents of group homes are able to access these protections if they elect to do so. To ensure that residents can access the protections under the *Family Violence Protection Act 2008* (FVPA) as well as the associated services and supports, the FVPA should be amended to make it clear that co-residents in group homes constitute 'family-like relationships' for the purposes of the Act. OPA made this recommendation to the Royal Commission however it was not adopted.

Resorting to an IVO to remove someone from their home and to push the disability service system to respond to incidents of co-resident violence is not necessarily the best method of handling situations of violence and abuse in group homes. Nonetheless, recognising violence between group home co-residents as family violence would be beneficial because it would enable victims to access a wide range of family violence services and supports such as crisis and emergency accommodation. As discussed earlier in this submission, these are currently being redesigned to reduce barriers for people with disability as part of the Victorian Government's commitment to implement all 227 recommendations. Female victims may also then be able to access additional supports through the Disability Family Violence Crisis Response initiative.<sup>13</sup>

As a result, the Victorian Government should seek to amend the FVPA to:

- explicitly state that co-residents in Supported Disability Accommodation are in 'family-like relationships' for the purposes of the Act and
- ensure that, before making a Family Violence Intervention Order, the court is required to consider whether the respondent is able to understand the nature and effect of the order and comply with its conditions.

### **Disability awareness training**

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<sup>12</sup> Victorian Government website, *Family violence recommendations, Provide funding to develop comprehensive family violence learning and training* <https://www.vic.gov.au/family-violence-recommendations/provide-funding-develop-comprehensive-family-violence-learning-and>

<sup>13</sup> Office of the Public Advocate, *"I'm too scared to come out of my room:"*, *Preventing and responding to violence and abuse between co-residents in group homes* (2019) 142.

A range of initiatives is underway, but there is more work to be done to ensure that the justice system is accessible for people with disability and complex needs. It is important that people with disability are supported to engage with and access the justice system to ensure they enjoy equality before the law and equal access to justice. This is not currently the case despite forming part of Australia's obligations under the Convention. In addition to the provision of support to individuals, the justice system must make reasonable adjustments to ensure accessibility for all users. While there are a number of commendable pilots and projects underway, the system is not accessible to people with disability.

All justice system personnel should also be provided with comprehensive training so that they know how to communicate with people with disability. In order to make the appropriate adjustments, it is essential that justice personnel have an understanding of cognitive impairment to know how it may present differently, and how people may be impacted differently by the nature of their impairment. The Victorian Government should fund mandatory disability awareness training for all justice staff to enable them to fulfil their obligations under the Convention. The training should be developed and delivered by or in consultation with people with disability.<sup>14</sup>

The Victorian Government should also fund mandatory disability awareness training for all staff in the family violence sector. The training should also be developed in consultation with people with disability.

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<sup>14</sup> Ibid 75.