

Inquiry into abuse in disability services Stage 2

Submission to the Family and Community Development
Committee

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SUMMARY OF RECOMMENDATIONS

Recommendation 1. The Victorian Government should adopt a whole-of-government policy that the *Charter of Human Rights and Responsibilities Act 2006* (Vic) should apply to the NDIS in Victoria to the fullest extent possible.

Recommendation 2. During the interim period of transition to the NDIS from 2016 to 2019, the Victorian Government should improve the integration of existing bodies to fill the gaps and address overlaps on the boundaries in the current system (see figure 1 for details).

Recommendation 3. During the interim period of transition to the NDIS from 2016 to 2019, the Victorian Government should maintain responsibility for all elements of the disability safeguarding system, as outlined in the bilateral agreement between Victoria and the Commonwealth.

Recommendation 4. During the interim period of transition to the NDIS from 2016 to 2019, DHHS should continue to have a role as service provider of last resort.

Recommendation 5. During the interim period of transition to the NDIS from 2016 to 2019, DHHS should provide an information and entry point for people whose needs are not being met by the NDIS, including monitoring who is missing out and providing support for people where disability, housing and complex needs intersect and where a coordinating function is not provided by the NDIA.

Recommendation 6. During the period prior to completion of the full roll-out of the NDIS, OPA recommends that the Victorian Government (either the Ombudsman or the FCDC) undertake an evaluation or inquiry into the impact of the transitional working arrangements (to be established in December 2015 under the bilateral agreement) on Victorian quality and safeguards.

Recommendation 7. The Victorian Government should increase funding for advocacy in the transition to the NDIS.

Recommendation 8. The Victorian Government should fund an independent external review of the administration of advocacy services, components of which would include a needs analysis, service mapping exercise and consultations with key disability agencies, advocacy agencies, consumer and carer groups and consideration of an advocacy philosophy and principles.

Recommendation 9. The Victorian Government should develop a state-wide prevention and risk management plan for the Victorian disability workforce during the NDIS transition period.

Recommendation 10. The Victorian Government should continue to run a disability worker exclusion scheme and undertake further research into best practice checks for working with vulnerable people.

Recommendation 11. The Victorian Government should introduce a minimum qualification of Certificate IV disability services for disability support staff working in disability residential services, including agency and casual staff, in addition to providing specialist training, support and monitoring of staff.

Recommendation 12. The Victorian Government should establish a high level anti-abuse taskforce of Executive Officers and Directors in key disability organisations including OPA, tasked with developing and implementing an anti-abuse education, training and cultural change strategy across the disability sector.

Recommendation 13. The Victorian Government should fund an organisation to develop and deliver anti-abuse cultural change training packages to disability residential service providers.

Recommendation 14. Volunteer Community Visitors should continue to be part of the safeguarding framework in Victoria and resourced appropriately.

Recommendation 15. The Community Visitors Program should continue to be located within the Office of the Public Advocate.

Recommendation 16. If a paid official visitor role is introduced in Victoria, official visitors should be located with Community Visitors in the Office of the Public Advocate.

Recommendation 17. OPA supports the introduction of mandatory reporting to an independent oversight body as outlined by the Victorian Ombudsman ‘where people with disability are suspected of being victims of abuse but do not have the capacity to make an informed decision about whether or not to report it’.

Recommendation 18. The Senior Practitioner should continue to be a specific entity with independent statutory powers.

1. Introduction

The Victorian Office of the Public Advocate (OPA) welcomes this opportunity to make a written submission to stage 2 of the Family and Community Development Committee Inquiry into Abuse in Disability Services.

OPA is an independent statutory body with legislative powers under the *Guardianship and Administration Act 1986*. OPA is dedicated to upholding the rights and interests of Victorians with a cognitive impairment or mental ill health, and works to eliminate abuse, neglect and exploitation.

OPA provides a number of services to work towards these goals, including the provision of guardianship, investigation and advocacy services to people with cognitive impairments or mental ill health. In the 2014-2015 financial year, OPA was involved in 1511 guardianship matters, 438 investigations and 381 advocacy matters.

OPA coordinates the Community Guardianship Program, the Community Visitors' Program and the Independent Third Person Program, providing support to over 900 volunteers and undertaking over 5000 visits and 2898 interviews in 2014-2015.¹ OPA plays a role in community education, the provision of advice and information and undertakes research, policy development and systemic advocacy.

OPA has extensive experience in reporting on and investigating violence and abuse in institutional and residential settings, stemming from the Public Advocate's statutory responsibility in this area and the reporting role of the Community Visitors.

Evidence for this submission comes from the following OPA submissions:

- o Office of the Public Advocate submission to the Victorian Parliamentary Inquiry into abuse in disability settings, stage 1. <http://www.publicadvocate.vic.gov.au/research/131/>
- o Office of the Public Advocate submission to the Victorian Ombudsman's Investigation into disability abuse reporting. (not publicly available)
- o Australian Guardianship and Administration Council submission to the Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework consultation paper. <http://www.publicadvocate.vic.gov.au/research/131/>
- o Office of the Public Advocate submission to the Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework consultation paper. <http://www.publicadvocate.vic.gov.au/research/131/>
- o Submission to the Senate Standing Committee on Community Affairs Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings. <http://www.publicadvocate.vic.gov.au/research/131/>

¹ Other volunteer programs include the Corrections Independent Support Officer Program and the Oval Project, established in partnership with VALID to support people with intellectual disability with decision making in relation to NDIS matters.

2. Background

OPA's experience in violence and abuse and our involvement in the National Disability Insurance Scheme (NDIS) were illustrated in detail in our submission to stage 1 of the Inquiry and a brief recap is provided here.

OPA has extensive experience in reporting on and investigating violence and abuse in institutional and residential settings, stemming from the Public Advocate's statutory responsibility in this area and the reporting role of the Community Visitors.

Under the Guardianship and Administration Act, the Public Advocate is charged with 'the protection of persons with a disability from abuse and exploitation and the protection of their rights'.² The Public Advocate is also entitled to enter any premises on which an institution is situated where abuse of people with disability is suspected.³

OPA has been involved in the NDIS in a variety of ways. Our involvement includes: advocacy and guardianship for people living in shared supported accommodation and Colanda Residential Services; visits by Community Visitors for NDIS participants living in disability residential services (group homes) and supported residential services (SRS) in the Barwon trial site; meetings with representatives of the National Disability Insurance Agency (NDIA) and; OPA's advice service has been an important source of information about ways of assisting participants with NDIS access and plan implementation issues.

OPA's policy unit has written a number of papers related to the NDIS including a discussion paper titled, 'Guardianship and the NDIS' that examines the interaction between state appointments of guardians and Commonwealth appointments of plan nominees.

OPA has been active in external discussions about the development of nationally consistent monitoring mechanisms of the NDIS.

² *Guardianship and Administration Act 1986*, s15(c)(iv).

³ *Ibid.* s18A.

3. Response to stage 2 questions

This submission will address a number of the areas and select questions raised by the Committee:

- o Human rights and safeguards
- o Independent oversight body
- o Disability advocacy services
- o Prevention, screening and accreditation
- o Professional development
- o Workforce culture
- o Complaints handling
- o Guidelines for responding to abuse
- o Visiting schemes
- o Mandatory reporting
- o Oversight of restrictive practices

3.1. Human rights and safeguards

The rights provided under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) in Victoria need to be maintained for people accessing disability services, both in the transition to the NDIS and once it has been fully rolled out. Many of the civil and political rights articulated in the Charter are directly relevant to people with disability in the context of safeguards and monitoring of violence and abuse. For example, section 8. ‘Right to recognition and equality before the law;’ section 22 ‘Right to humane treatment when deprived of liberty;’ and section 24 ‘Right to a fair hearing.’

The 2015 Victorian review of the Charter of Human Rights and Responsibilities Act concluded that, even though the Charter only applies to matters the Victorian Parliament can legislate on, the application of the Charter is ‘one of a number of areas of public law that Victoria needs to consider when negotiating a new national scheme’.⁴

The review proposed that the Charter be amended to include public disability services in the non-exhaustive list of functions of a public nature to which the Charter applies. OPA supports the recommendation of the review that:

⁴ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (2015), p203.

“The Victorian Government adopt a whole-of-government policy that, in developing a national scheme, the Charter should apply to the scheme in Victoria to the fullest extent possible.”⁵

OPA would be very concerned if the Charter did not have application in the area of disability service provision. Consideration must be given to how the Charter might apply within an NDIS environment. OPA strongly suggests the Charter inform the Victorian Government’s position on appropriate quality and safeguards for the NDIS.

3.2. Independent oversight body

During the interim transition period to the NDIS what should the Victorian Government do?

During the interim period of transition to the NDIS from 2016 to 2019, the Victorian Government should improve the integration of existing bodies to fill the gaps and address overlaps on the boundaries in the current system.

While the transition arrangements for quality assurance and safeguards in transition to the full NDIS from July 2016 to July 2019 are protected until such time as elements of a nationally agreed framework is in place, working arrangements are yet to be determined. They will be developed by December 2015 in consultation with the NDIA.⁶

Current protections in Victoria were been found to be inadequate in the first stages of both the Ombudsman’s inquiry into reporting and investigation of abuse (the Ombudsman’s Inquiry) and the Parliamentary Inquiry into abuse in disability services (the Parliamentary Inquiry). With the NDIS not expected to be fully implemented until 2019, changes to current arrangements are needed to ensure the protection of people with disability in institutional and residential settings.

Existing elements of Victoria’s safeguarding system include:

- o Prevention of abuse (standards and registration of providers, screening of new workers, exclusion of unsuitable workers) and;
- o Responding to abuse (complaints handling system, community visitors scheme, critical incident management system, oversight of restrictive practices).

Oversight bodies include the Office of the Public Advocate (OPA), Community Visitors, the Disability Services Commissioner (DSC), the Senior Practitioner, the Victorian Ombudsman and the Department of Health and Human Services (DHHS).

Given the complexity and size of the current safeguarding system and the number of bodies involved, OPA does not believe the three year transition period is long enough to effectively create a new body or allocate responsibilities to a single body. Instead, the

⁵ IBID Recommendation no 47.

⁶ See Bilateral Agreement Between the Commonwealth and Victoria, Transition to a National Disability Insurance Scheme Schedule F.

focus should be on addressing the issues raised by the Ombudsman in her comprehensive review of the reporting and investigation of abuse in the disability sector.

OPA submits that the following changes would address many of the issues raised by the Ombudsman and should be considered in a transitional arrangement to improve the integration of existing bodies, knowledge of and response to violence and abuse.

Table 1. Proposed changes to safeguarding responsibilities in the NDIS transition period

Sector wide

- The development of a common framework for the reporting of abuse
- Enhanced information sharing about incidents between Community Visitors, DSC and DHHS (Omb 520)

DHHS

- A requirement for mandatory reporting of abuse where a person does not have the capacity to make an informed decision about whether or not to report abuse (Omb 496)
- Requirement to collect and analyse incident report data (Omb 503)
- Publication of incident report data
- Independent review of all serious critical incident reports (Omb 505)
- Guidelines on when an external investigator should be engaged (Omb 511)

DSC

- Investigation of complaints relating to abuse or neglect where conciliation is not appropriate (Omb 507)
- Own motion powers of investigation (Omb 510)
- Written reports on each complaint de-identified and publically available on website and to DHHS

SRSs

- Requirement for SRSs to develop an internal review process for allegations of abuse (Omb 513)
- Additional powers for the Public Advocate and Community Visitors to investigate allegations of abuse (Omb 515)

Community Visitors

- Development of internal protocol on using powers under section 33 of the Disability Act 2006 (Omb 478.)
- Review of the processes in place to escalate matters with a view to escalating matters earlier (Omb 476)
- Additional funding to Community Visitors to ensure a minimum of four visits per year in disability services (OPA submission FCDC stage 1)
- Improved access to incident report information

Public Advocate

- Enhanced powers of investigation for the Public Advocate including own motion powers (Omb 535; VLRC 2012 recommendations 328 and 329)
- Responsibility for education and prevention in the area of abuse

Advocacy

- Comprehensive assessment of advocacy needs of people with disability (Omb Rec 2a)
- Enhanced funding for advocacy to be managed by an independent advocacy agency (Omb 531)
- Research into most appropriate independent body to administer advocacy funding in Victoria (OPA submission FCDC stage 1)

If the current safeguarding responsibilities were allocated to a single existing body, who should this body be?

The Victorian Ombudsman has recommended that the 'Victorian Parliamentary Family and Community Development Committee further examine the logistics of a single independent oversight body, as it considers interim measures to strengthen the disability system prior to the introduction of the NDIS' (Omb recommendation 1b).

OPA is concerned that three years is too little time for a major reform of the system and as such, OPA does not believe the current safeguarding arrangements should be allocated to a single body in the transition to the full roll-out of the NDIS.

Should the state maintain responsibility for some elements of the safeguarding system during and after the transition to the NDIS?

During the transition to the NDIS, the state should maintain responsibility for all elements of the safeguarding system, as outlined in the bilateral agreement between Victoria and the Commonwealth.

During the period prior to full roll-out of the NDIS, OPA recommends that the Victorian Government undertake an evaluation or inquiry into the impact of the transitional working arrangements (to be established in December 2015 under the bilateral agreement) on Victorian quality and safeguards. This analysis will enable the state to review its responsibility for elements of the safeguarding system and ascertain what elements of the Victorian system will be important to retain once we have fully transitioned to the NDIS.

OPA supports the view that the DHHS should retain some responsibility for people with disability during the NDIS transition. While DHHS is not considered part of the safeguarding framework, the principal argument for maintenance of some type of DHHS safeguard role beyond the NDIS transition is the high likelihood that there will be people with disability in Victoria not in receipt of NDIS funding. This could be because they either do not learn about the scheme, do not acknowledge themselves as having a disability, do not wish to participate in the NDIS or are found ineligible for the NDIS.

Examples of people with disability who may not receive NDIS funding include:

- o people with mental illness who are homeless and marginalised accessing Home and Community Care (HAAC) services
- o Aboriginal people with disability accessing specialist HAAC services
- o people with complex needs who find it difficult to maintain connection with the service system
- o people with disability in supported residential services who are not aware of the NDIS
- o people with dual disabilities exiting the criminal justice system
- o young people living in nursing homes without an advocate to support them
- o people with mental illness using community mental health support services who either do not qualify for the NDIS or who do not identify as having a permanent impairment (or where the concept of permanence conflicts with their recovery journey).

An observation that OPA would make on the operation of the NDIA in the Barwon trial site is that the NDIA as a funder of services occupies a very different role to that of the DHHS, which is both a service provider and a regulator of services. The limited safeguarding role that the NDIA currently plays in trial sites, and will play on full roll-out of the scheme, necessitates a residual safeguarding role for DHHS. For example, when an NDIA planner confronts a situation of risk, what can they do? Who will investigate? As funder, what responsibility do they have to ensure the person receives the support they need?

DHHS should continue to have a role as service provider of last resort in situations of 'market failure' where, for instance, no service provider is willing or has the capacity to provide necessary support to a prospective NDIS client with complex needs. Failure to provide a service will likely result in personal cost to the individual and financial costs to the state due to recourse of the client to the secondary service system (e.g. homelessness, criminal justice system, health, mental health).

In addition, OPA submits that the state has a very important role to play in safeguarding people with disability who will either not be eligible for or not take up the NDIS. This role might involve monitoring who is missing out and providing an information and entry point for people whose needs are not being met by the NDIS. There is also a need for the state government to provide support for people where disability, housing and complex needs intersect and where this coordination function is not provided by NDIS.

If a single oversight body were established in Victoria, what governance, accountability and oversight arrangements would need to be established to ensure it is accountable in safeguarding people who access disability services?

OPA does not believe the current safeguarding arrangements should be allocated to a single body in the transition to the full roll-out of the NDIS as three years is too little time for major reform of the system.

3.3. Disability advocacy services

What would be the most appropriate approach to the administration of funding disability and advocacy services, bearing in mind both state and federal funding streams?

OPA supports the Ombudsman's finding that an increase in the funding for advocacy is needed in Victoria, particularly in the transition to the NDIS (Omb recommendation 2). OPA supports the view that the administration of advocacy should be undertaken by an independent service or statutory body rather than from within the DHHS.

OPA believes the question of where administration for advocacy services should sit is a matter for review by an independent external reviewer. Components of the review should include a needs analysis, service mapping exercise and consultations with key disability agencies, advocacy agencies, consumer and carer groups and consideration of advocacy principles and philosophy.

3.4. Prevention, screening and accreditation

Should the Victorian Government develop a statewide prevention and risk management strategy for the Victorian disability workforce from 2016 to 2019?

The Victorian Ombudsman stated that two types of risks were likely to exist during the NDIS: the risk of receiving poor quality services and the risk of being harmed in some way. Both the Victorian Ombudsman and the Family and Community Development Committee have established that those risks are current realities in the Victorian disability sector.

OPA supports the need for the state to take responsibility for developing a statewide prevention and risk management strategy for the Victorian disability workforce during the NDIS transition period as a way of addressing concerns raised in the various inquiries into violence and abuse prior to full roll-out.

What components would comprise such a strategy?

Components of a statewide prevention and risk management strategy could include education and training for service providers and service users about standards and incident reporting and escalation processes, information for workers and service users about recognising and responding to violence and abuse; provider registration and

standards; worker exclusion scheme; the introduction of minimum qualifications and addressing workforce culture.

What would be the most preferable screening system to establish?

OPA supports a worker exclusion scheme and further research into best practice checks for working with vulnerable people.

3.5. Professional development

Should minimum qualifications be introduced for disability workers?

Community Visitors find that poorly trained staff are unlikely to have a sophisticated understanding of disability and complex behaviours and may be unable to manage people with complex needs or to recognise and report actions that put residents at risk.

A minimum qualification of Certificate IV disability services should be introduced for disability support staff working in disability residential services, including agency and casual staff. In addition, specialist training, support and monitoring of staff is needed.

3.6. Workforce culture

What does the Victorian Government need to do to support a disability workforce culture that does not tolerate abuse, neglect or exploitation?

OPA's analysis of Community Visitors notifications to the Public Advocate, outlined in our first submission to the Parliamentary Inquiry, reveals a range of workforce issues at play in cases of violence and abuse of people in disability residential settings. Bullying and abuse of residents appears embedded in the culture of some services where there is an implicit acceptance of behaviours that cause harm and a reluctance to name this as violence. This culture may include bullying of staff, intended to discourage reporting. Some staff who report incidents of staff to resident abuse fear losing their jobs.

The establishment of an anti-abuse culture requires strong leadership and continuous professional development, supervision and support by highly trained and experienced staff. Cultural change is needed across non government and government organisations. It is imperative that leadership in this area starts with the Victorian Government, who will remain the chief funder of disability services until completion of the NDIS roll-out in 2019.

Two ways the Victorian Government could provide leadership in this area are to:

1. establish a high level anti-abuse taskforce of Executive Officers and Directors in key disability organisations, including OPA tasked with developing and implementing an anti-abuse education, training and cultural change strategy across the disability sector. Elements of an anti-abuse strategy could include leadership training; workforce training; champion development; developing

policies, good practice guidelines (e.g. IGUANA) and staff codes of conduct; working with consumer and carer advisory committees to co-design and support anti-violence initiatives; rewarding good practice models; research and conferencing.

2. fund a credible organisation to develop and deliver cultural change training packages to disability residential service providers. The training would be mandatory at all levels of organisations (e.g. cultural diversity training or cultural sensitivity training for Victorian Government departments). Selection of a provider should be undertaken in collaboration with experts in the sector.

3.7. Complaints handling

If the Victorian Government introduces an independent oversight body, what responsibilities should it have?

It is widely anticipated that the National Disability Reform Council will support the establishment of a National oversight body and that state offices will be established to manage each component at a local level.

On full roll-out of the NDIS, OPA supports the establishment of a National oversight body independent of Government and the NDIA. OPA believes that the components of a National independent oversight body relating to complaints should include:

- o General complaints handling
- o Abuse, neglect and exploitation complaints handling
- o Investigating allegations of abuse and neglect
- o Conducting own motion investigations
- o Conciliation and resolution of complaints where appropriate
- o Collecting data about complaints and reporting publicly
- o Analysis of systemic trends relating to complaints
- o Raising public awareness about the rights of persons with disability
- o Educating service providers about the benefits of effective complaints mechanisms

In the transition period to full NDIS roll-out, OPA would like to see the Disability Services Commissioner adopt the following functions:

- o Investigation of complaints relating to abuse or neglect where conciliation is not appropriate (from Omb 507)
- o Own motion powers of investigation (from Omb 510)
- o Written reports on each complaint de-identified and publicly available on website and to DHHS

3.8. Visiting schemes

The Productivity Commission in its *Inquiry into Disability Care and Support Report* made the following comment about Community Visiting schemes, with an emphasis on the Victorian model:

Official Community Visitors should play an important role in promoting the rights of, and overseeing the welfare of, the most vulnerable people in the disability system (and be introduced in jurisdictions where they do not already exist).⁷

In doing so it is desirable to replicate features of the Victorian model, including the publication of annual reports and the use of volunteers.⁸

OPA directs the Parliamentary Committee to the position expressed by the Productivity Commission in its own valuation of Community Visitors programs:

Community Visitors are a well targeted way of monitoring groups with particular vulnerability who receive care and support in situations where poor practices or outcomes are more likely to go undetected. The capacity for random inspection strengthens industry wide incentives to comply with service standards as well as other laws and regulations. As such, these schemes should be implemented in states where they do not currently exist under the appropriate state and territory statutory bodies, potentially with funding assistance from the NDIS.⁹

Currently, OPA Community Visitors are active in the Barwon trial site. Community Visitors' representatives have also met with NDIS staff to raise concerns identified during visits. The greater use of in-home care and services provided in a private provider setting present challenges to the monitoring role of Community Visitors, which is currently restricted to services provided under the *Disability Act 2006*, *Mental Health Act 2014* and the *Supported Residential Services (Private Proprietors) Act 2010*.

In the 2013-2014 Community Visitors Annual Report, the Public Advocate, as Chair of the Community Visitors Combined Board, raised concerns in relation to the implementation of the NDIS and the transition to a nationally consistent quality and safeguarding framework.

⁷ Productivity Commission, *Inquiry into Disability Care and Support* (2011) Report No 54, Vol 1, 52.

⁸ Ibid 509.

⁹ Productivity Commission. OpCit.

The [Community Visitors] Program remains concerned about the impact of the full rollout on volunteers' ability to visit accommodation facilities. Volunteers are apprehensive that their powers under current state legislative arrangements to enter disability services, supported residential services and mental health facilities may not continue to apply in the same way when the NDIS is fully implemented. In addition, it is expected new private accommodation providers will enter the sector. OPA worries that such providers may not possess the necessary skill base and experience required to provide an appropriate level of care to a person with a cognitive impairment or mental illness, and Community Visitors' ability to visit such accommodation settings into the future remains unclear.¹⁰

Legislative reform will be required in Victoria to ensure the role of Community Visitors is maintained and reflects the needs of people with disability in the new NDIS environment. The Victorian Government must maintain a strong advocacy position in relation to the importance of Community Visitors Programs in protecting and promoting the rights of persons with disability.

In view of the skills necessary in identifying and responding to abuse and neglect, should consideration be given to paid inspectors or paid official visitors in Victoria?

While OPA supports consideration of the introduction of paid officials, a paid model by comparison would be at a significant cost. Community Visitors across the mental health, disability services and residential services stream make up a significant workforce of 550 people. In 2015, the Community Visitors' combined Board calculated that a conservative estimate of the cost of the Community Visitors' contribution to the Victorian Community is \$3.6 million.

The value of Community Visitors being volunteers rather than paid inspectors is that they are considered to be the 'eyes and ears of the community'. To quote from Mark Feigan's PhD thesis on the history of OPA:

'When the Office was established in 1986, its functions included an innovative approach to the inspection of residential care and treatment services for people with intellectual disability and mental illness, the Community Visitors Scheme. What was original about the Community Visitors was the performance of the inspection role by ordinary members of the community. This distinctive feature promised lasting benefits beyond the immediate protection of people with disability from maltreatment in services.'¹¹

¹⁰ Office of the Public Advocate, *Community Visitors Annual Report 2013-2014* (2014) p8.

¹¹ Feigan 2011 *The Office of the Public Advocate Victoria: A first history*, PhD thesis, p200.

The intention of Ben Bodna, Victoria's first Public Advocate, was that Community Visitors would not be paid experts but ordinary citizens:

‘Activities would not be carried out by specialised experts and officials reporting in-house. Rather, inspections would be conducted by ordinary people, citizens, who would report to the Parliament. Their reports would expose conditions for people with disability to the scrutiny of all citizens and their elected representatives.’¹²

While the Community Visitors Program and Public Advocate welcome consideration of whether the Community Visitor role should be paid or unpaid, we do not believe the evidence presented by the Parliamentary Inquiry report is sufficient to support the inference of the Committee that Community Visitors do not have ‘appropriate skills and experience’ to undertake their role.¹³

While Community Visitors are not selected on the basis of specialist knowledge, they are carefully screened and given significant training. Community Visitors receive regular training covering functions within the scope of their role. The Community Visitors Program has a Training Steering Committee comprising Community Visitors who are both Board and non-Board members from each stream and OPA Community Visitor Program Staff. In 2014-2015 financial year, 65 training sessions were conducted for 451 Community Visitors and the Committee completed the following pieces of work:

- o Competency Assessment Rubrics for Community Visitors and Panel Secretaries and Regional Convenors
- o Mental Health Act Implementation
- o Good Group Homes Workshop

The Ombudsman in her Inquiry stated that there is a need for Community Visitors to escalate matters earlier rather than ‘participate in protracted exchanges’ and that there is a need to review the processes in place to escalate matters. She also reported that the Community Visitors Board should make more use of its statutory powers to refer matters to the Secretary of the Department, the DSC, the Senior Practitioner or the Ombudsman. The Community Visitors Program is currently considering how they can implement the concerns raised by the Ombudsman’s inquiry (see page 9 for recommendations relating to this)

¹² IBID, p 201

¹³ See the statement on p124 of the FCDV report which states: ‘The Committee considers that there is value in considering the establishment of an official inspector scheme with paid officials who have the appropriate skills and experience.’

If a paid inspector or paid official visitor role is introduced in Victoria, should they be located with an independent oversight body or other entity?

Paid officials should sit with Community Visitors in the Office of the Public Advocate.

Should volunteer Community Visitors continue to be part of the safeguarding framework in Victoria?

Community Visitors should continue to be part of the safeguarding framework in Victoria. OPA undertook a survey with Community Visitors due to the limited time available to undertake individual consultations. Of 134 Community Visitors responding to this question, 126 (94%) said that Community Visitors should continue to be part of the safeguarding framework in Victoria.

If Community Visitors continue to be part of a safeguarding framework in Victoria, should they be located within the Office of the Public Advocate, a new independent oversight entity or another body?

The Public Advocate believes that the roles of the Public Advocate and Community Visitors in relation to protection of rights of people with disability in Victoria are aligned.

Under the Guardianship and Administration Act, the Public Advocate has a function to arrange, coordinate and promote public awareness and understanding by the dissemination of information with respect to the protection of persons with disability from abuse and exploitation and the protection of their rights.¹⁴

At the request of the Victorian Civil and Administrative Tribunal (VCAT), the Public Advocate can investigate any complaint or allegation that a person is under inappropriate guardianship, or is being exploited or abused or is in need of guardianship. The Public Advocate also holds specific powers of entry and inspection where abuse of people with disability is suspected.¹⁵

The Victorian Law Reform Commission in its review of Victoria's guardianship laws argued that the Guardianship and Administration Act should be amended to give the Public Advocate broader power to conduct investigations into 'the abuse, neglect or exploitation of people with impaired decision-making ability' (recs 328 and 329).

As a statutory body sitting in the Department of Justice and Regulation, the Office of the Public Advocate provides independence from the Department of Health and Human Services, the chief funding body of the institutions and residences visited by Community Visitors and potentially, paid inspectors. The role of the Public Advocate in relation to Community Visitors supports the function of the Public Advocate of 'encouraging the

¹⁴ *Guardianship and Administration Act 1986* (Vic) s15(c)

¹⁵ *Guardianship and Administration Act* s18A(1), 18A(5).

involvement of voluntary organisations and relatives, guardians and friends' in the provision and management of services and facilities.¹⁶

Of 132 Community Visitors in the OPA survey responding to the question 'should Community Visitors be located within the Office of the Public Advocate, a new independent oversight entity or another body?', 102 (77%) said that Community Visitors should continue to sit within the Office of the Public Advocate. OPA does not believe that Community Visitors would sit well with any of the other existing bodies (e.g. Disability Services Commission, Ombudsman)

3.9. Mandatory reporting

While OPA supports the intention of mandatory reporting to an independent oversight body as outlined by the Ombudsman, which is for consideration of mandatory reporting of abuse 'where people with disability are suspected of being victims of abuse but do not have the capacity to make an informed decision about whether or not to report it.'¹⁷

OPA's Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA) provides guidance around how to handle the question of capacity of the person experiencing abuse. IGUANA suggests that in the case where a crime has occurred:

'If the victim wishes not to report the matter to police, and has capacity to make this decision, this wish should be respected unless: there is evidence aside from the victim's testimony of a crime having been committed, or the victim suffered serious harm, or the victim's decision was made under duress, or; the victim or other services users are still at risk of violence or abuse.'¹⁸

3.10. Oversight of restrictive practices

OPA supports the valuable role of the Senior Practitioner in regulating and minimising the use of restrictive practices in disability services. In the transition to the NDIS, the Senior Practitioner should continue to provide the regulatory role for restrictive practices for disability residential services. OPA is of the view that if the role of the Senior Practitioner under the Disability Act 2006 does not apply to NDIS funded supports, it would greatly diminish the protections that currently exist in Victoria and that national consistency should not be pursued to the detriment of the level of protection afforded by the Disability Act. The Senior Practitioner should continue to be a specific entity with independent statutory powers and its own office.

¹⁶ Guardianship and Administration Act s15(a)(iv).

¹⁷ Ombudsman's investigation, section 496.

¹⁸ Office of the Public Advocate 2011 Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA).