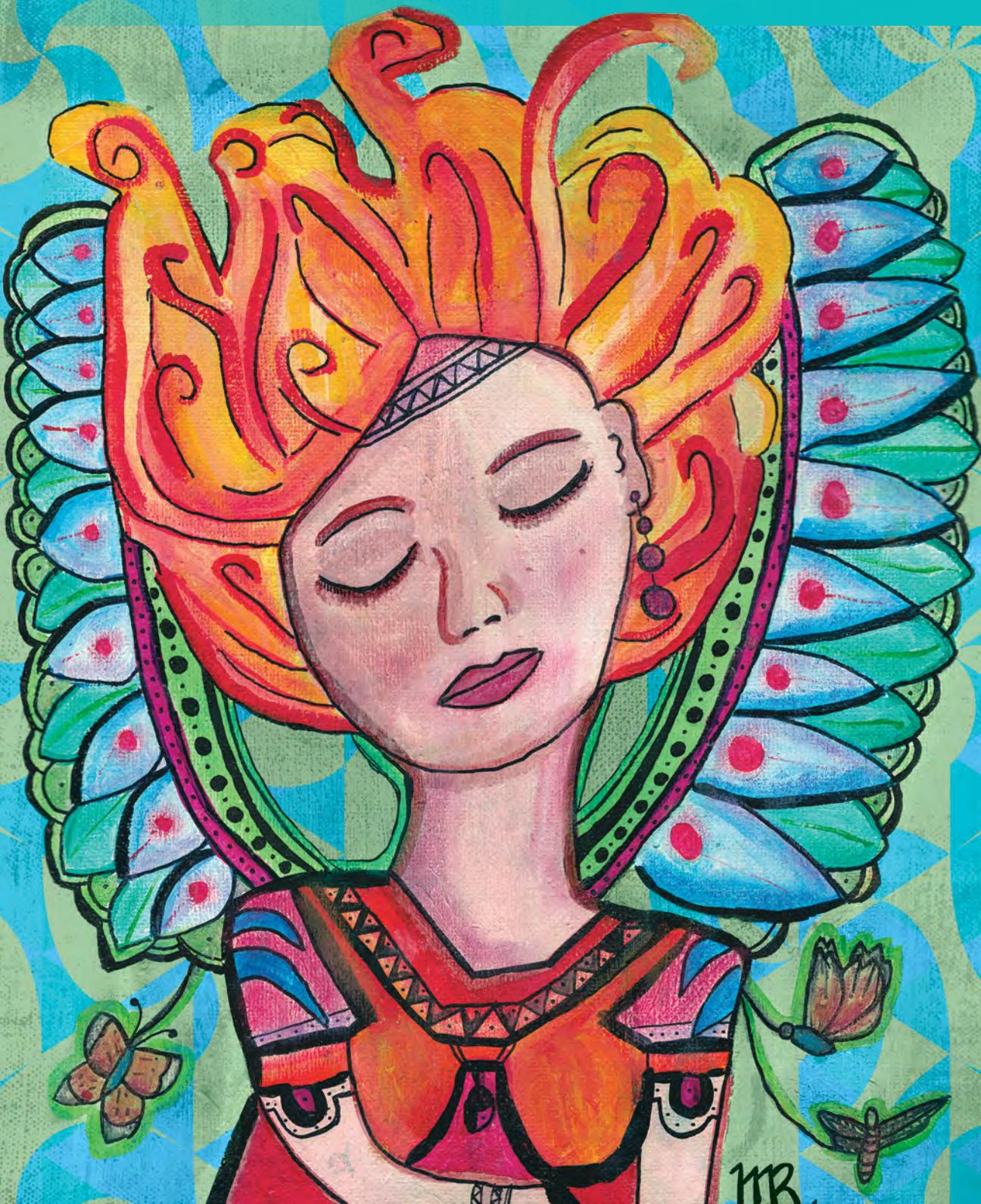




Office of the
Public Advocate

Working to eliminate
abuse, neglect and
exploitation

Annual Report
2014–2015





Maree Roche

Serenity

Acrylic, soft pastel and
ink liner on canvas
40 x 50cm

**Office of the Public Advocate
Annual Report 2014–2015**

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About the cover image by artist Maree Roche

"My painting Serenity was created during one of my art meditation sessions at home, outside, on the porch with the afternoon sun warmly on my back, our dog sitting on my toes and our rescue horses barefoot trotting in the distance.

Serenity represents the intuitive inner angel within us all; creative, compassionate, spiritual, colourful, vibrant; unique in our own spectrums of light, a tapestry and kaleidoscope of rich colours, talents, gifts and abilities. She is our new beginnings, our journeys, our spirits and our soul. She embraces our heart and gives us the courage to be enough, to heed our inner voice, to celebrate life whilst living in the present. She embodies us, encourages us, represents us and is a steadfast voice for us in the midst of doubt, criticism, uncertainty and insecurity. She is the lighthouse in the storm and epitomises what it truly is to be free."

Serenity was first exhibited at the ArtAbility® 2014 exhibition, 'Transitional Spaces', at the Federation Square's Atrium. The 2015 exhibition 'Future Landscapes' is being held at the same venue from 7–17 December.

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Office of the Public Advocate

The Hon. Martin Pakula MP
Attorney-General
Level 26, 121 Exhibition Street
Melbourne VIC 3000

1 September 2015

Dear Minister

RE: Office of the Public Advocate Annual Report 2014-2015

Please find enclosed the *Office of the Public Advocate Annual Report 2014-2015*.

The report covers activities in all program areas including emerging issues. It contains data and analyses of a wide variety of work across the office in the protection of the rights and interests of Victorians with a disability and a mental illness.

In particular, it includes a detailed report on our important guardianship services including our waiting list for allocation of a guardian, the increased complexity and litigation associated with guardianship, and the increased provision of investigations to VCAT.

On behalf of the management and staff, I commend the report to you.

Yours sincerely

Colleen Pearce

Colleen Pearce
Public Advocate

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Message from the Public Advocate

This year has seen mounting pressures on the office as it tries to grapple with increasing demands across all program areas.

The past year has seen a continued strong demand for guardianship, an increase in advocacy and significantly increased investigation demand. One of the biggest issues for the program throughout the year has been the on-going high numbers of Victorians awaiting the allocation of a guardian.

Over one-quarter of those people on the waiting list during the year were assessed as needing an urgent decision.

It has been a significant year from the policy point-of-view with four government inquiries into violence and abuse and with the issues emerging from the Barwon trial site of the NDIS presenting opportunities for involvement across all program areas.

I welcomed the Ombudsman's Inquiry into the reporting and investigation of abuse in institutional settings earlier this year. The Ombudsman's finding in her Phase 1 report, that the system is failing to deliver protection in a coherent and consistent way, was not surprising: Community Visitors have been reporting on this in their annual reports to Parliament every year since 1988.

I was heartened by the Ombudsman's acknowledgement of the important role that Community Visitors play in safeguarding the rights of people with disability living in institutional settings. Community Visitors were instrumental in calling for the Victorian Parliamentary Inquiry into Violence and Abuse in Disability Settings and I was pleased to see this take shape. The office looks forward to being involved in the second stage of both the Ombudsman's Inquiry and the Parliamentary Inquiry later this calendar year.

OPA continues to play a role in the Victorian NDIS trial site through both the Community Visitors Program and the Advocate Guardian Program.

OPA undertook advocacy for 30 residents of the Colanda institution in Colac. Despite NDIS plans being developed for all Colanda residents, OPA notes there have been substantial difficulties in implementing their plans. More recently, there has been progress on this matter.

OPA has been active in external discussions about the development of nationally consistent monitoring mechanisms and made a sole submission and a joint submission with the Australian Guardianship and Administration Council (AGAC) to the 'Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework Consultation Paper.' Community Visitors were promoted as a significant safeguard of the rights of people with disabilities in Victoria.

Volunteers continue to be the backbone of the office. OPA has over 900 of volunteers who commit their time and energy to being Community Visitors, Independent Third Persons, Community Guardians and supported decision-makers. This commitment ensures that people with disability in Victoria have protections and support that would otherwise not be available.

This year, I would like to specially acknowledge the relentless work of Community Visitors around violence and abuse in disability and mental health settings. The issues they have identified have been a driving force behind the high profile being given to violence and abuse in the public policy arena.

The Advice Service saw a 90 per cent increase in the number of email inquiries this year. The new powers of attorney laws, introduced through the *Powers of Attorney Act 2014* which will come into effect on 1 September 2015, will have a significant impact on the work of Advice Service and Community Education service.

OPA's Koori Inclusion Action Plan (KIAP) 2013-2014 was finalised mid-year after an audit and development process. I look forward to the office implementing the key elements of the plan which



include data improvement, Koori employment and economic participation and community engagement and partnerships.

Public Advocate
Colleen Pearce

A significant achievement for the year was the completion of the Supported Decision Making pilot project. This project matched 18 volunteers with 18 people with intellectual disability who worked together to demonstrate how supported decision-making might operate in practice.

The subsequent provision of funding to VALID and OPA by the National Disability Insurance Agency to target 60 participants under the NDIS Barwon Trial Site is a testament to the success of this project.

Finally, the year saw substantial progress in further redeveloping the OPA online presence.

Following extensive research conducted last year, the design was completed for a new external site and two intranets, one for OPA staff and another for OPA's volunteers.

Content was revised and updated and the new sites built in preparation for a launch of the sites next year. The new designs improve the accessibility of OPA's web presence.

This has been a critical undertaking for the office and its many and varied audiences, especially in light of the change to the powers of attorney laws next year and the increasing use of the web as the entry point to government services.

Colleen Pearce

Colleen Pearce
Public Advocate

Koori Inclusion Action Plan

OPA completed its *Koori Inclusion Action Plan 2015-2018* in June for launch on 20 July 2015.

The plan was developed as part of the Department of Justice's Koori Inclusion Action Plan, *Mingu Gadhaba: Beginning Together*. It is the culmination of the work of an OPA steering committee and input from members of Victoria's Aboriginal communities and organisations.

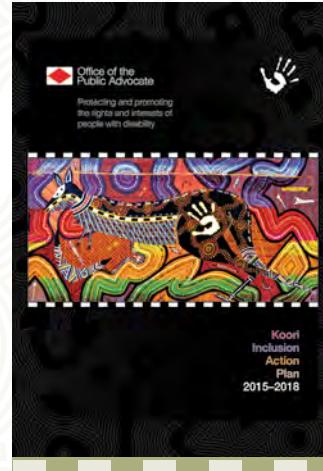
The plan would not have been possible without the support of Jason Mifsud who guided us through the process of its development. The support of Wurrundjeri Elders from the Wurrundjeri Council was also critical; the Elders hosted a delegation from OPA in April and provided feedback on OPA's Reconciliation Statement.

OPA's Reconciliation Statement outlines the organisation's commitment to working towards a vision of a just and inclusive society. The importance of deliberate actions that achieve reconciliation with Aboriginal and Torres Strait Islander (ATSI) people and the need for OPA to work towards making its services more welcoming and culturally responsive were highlighted. The importance of acknowledgement of past injustices is the starting point for understanding the present day experience ATSI people.

The KIAP seeks to strengthen the inclusion of Koori communities and culture in the work of the office with a view to OPA becoming more aware of and sensitive to Koori concerns in all of the work that it does. The plan has goals in four key areas:

- systemic Koori inclusion
- data service and improvement
- Koori employment and economic participation
- community engagement and partnerships.

The goal in the area of community engagement and partnerships is to achieve partnerships built on genuine engagement with, and respect for,



► “OPA recognises the importance of connection to country for Aboriginal people and their continuing spiritual connection to land. We acknowledge the impact of colonisation and dispossession of land that have contributed to Aboriginal people experiencing disadvantage across all measures of wellbeing.”

ATSI people across Victoria. Through meaningful engagement with Aboriginal-controlled organisations and respected ATSI community members, OPA intends to gain a greater understanding of the needs of the community. Implementation of the KIAP will enable OPA services to be more responsive to the needs of Aboriginal people and the communities with which it works.

Our work in the area of Koori employment and economic participation is underpinned by the Department of Justice's Koori Employment Strategy. The goal is to attract and retain Koori employees. This will be achieved by targeting recruitment campaigns to increase the number of Koori paid employees and volunteers. Koori businesses in both Aboriginal and non-Aboriginal focussed activities will be identified and utilised.

The following case study from OPA's Advocate Guardian Program highlights some of the complexities of guardianship in working with people with complex needs, in this case an Aboriginal man with a long history of institutionalisation, dispossession from family and kinship ties and the importance to him of connecting to culturally sensitive organisations.

Helping restore health and community

Mr. B, 42, is an Aboriginal man with an alcohol-related acquired brain injury (ABI), a diagnosis of mental illness and epilepsy and a long history of homelessness. Mr B's executive functioning was significantly reduced and he had a poor memory, disorientation, agitation, poor compliance with treatment and poor judgement.

At the time of the Victorian Council of Administrative Tribunal (VCAT) application for guardianship, Mr B. was serving a custodial sentence for a criminal matter. The application was made by an allied health professional at the assessment prison. They expressed concerns about Mr B's safety on release from prison due to his lack of insight in relation to accommodation and healthcare needs. On the basis of the application, VCAT made an order appointing OPA as the guardian for Mr B, with the authority to make decisions about Mr. B's accommodation, healthcare and access to services.

Following his release from prison, Mr. B immediately became homeless and recommenced drinking. He reverted to his former lifestyle, including sleeping under a tree near a major road, risking both his health and his safety, and he continued to refuse medical and social support. Due to his aggressive and violent history, services were reluctant to provide anything more than minimal support. Mr. B presented at a hospital emergency department by ambulance on a regular basis following seizures. Police would respond to calls from the public when Mr. B was causing a disturbance while intoxicated.

Mr. B presented immediate risks both to himself and to the community. He remained homeless as no service could accommodate him. The imminent risk to Mr. B's life was acknowledged at a meeting with police, homeless services, a hospital ALERT (assessment, liaison and early referral) team, ambulance, clinical services, mental health services, community legal services and the guardian. At the meeting, a senior hospital staff member concluded that the efforts so far to intervene in Mr. B's life had been futile. One clinical staff member said that everything that could have been done had been done and that it was inevitable that Mr. B would die.

The guardian stated at the meeting that the core issue was Mr. B's health and outlined her powers with respect to Mr. B's healthcare to the group. Mr. B required medication to minimise his risk of further seizures as well as a stable address from which to receive support. Several weeks later, when Mr. B presented to the emergency department for a life-threatening wound infection related to his seizures, the guardian was asked to consent to surgery. The surgery involved a hospital stay of several weeks while the wound healed, to which the guardian also consented.

On discharge from hospital, Mr. B was accommodated in a supported residential service (SRS) in an outer suburb. Following the hospital admission, Mr. B's trajectory began to change. The guardian consented to services provided by a multi-disciplinary team of providers, resulting in an integrated model of support, which supported Mr B to sustain his accommodation.

Once away from the city and with no access to alcohol, Mr. B stopped drinking. Because he was housed, he was provided with regular epilepsy medication, leading to a reduction in severity of seizures. Support from ABI behavioural support experts lead to improvements in Mr. B's capacity to manage difficult situations and in his overall health and wellbeing. Consistent case management and housing workers were found, one who has continued to work with Mr. B through an Aboriginal community service.

Mr. B is now no longer drinking and his epilepsy is well-managed. Through support from an Aboriginal community-based organisation, Mr. B is receiving excellent case management and is being linked into activities, which include renewed contact with his sister, his nephew and his culture.

Mr. B's trajectory is not dissimilar to that of many guardianship clients. Mr. B was one of ten children and spent much of his childhood in institutional care. Guardianship and the intensive support of many service providers and agencies have achieved an outcome that would not have been considered possible two years ago. It attests to the important role of the guardianship for decisions relating to healthcare, accommodation and access to services, including for Koori clients.

National Disability Insurance Scheme (NDIS)

The NDIS continues to attract involvement from OPA in a number of its program areas.

The Advocate Guardian Program, Community Guardianship Program, Supported Decision Making Pilot Program, Community Visitors Program and Policy and Research program are all involved in NDIS matters.

Commencing its third year of operation in the Victorian trial site of Barwon, the NDIS prompts many operational questions, opportunities and concerns arising for the people OPA has a role with, whether as guardian, advocate, decision-making supporter or Community Visitor.

In addition to our interactions with NDIS participants, OPA has undertaken significant work on NDIS policy, in developing publications, preparing submissions and attending meetings with senior officials at the National Disability Insurance Agency (NDIA) and other relevant agencies.

In 2014, OPA produced a discussion paper, 'Guardianship and the National Disability Insurance Scheme', that examines the interaction between state appointments of substitute decision makers (guardians) and the federal appointments of plan nominees. (A plan nominee can have a role in relation to the preparation, review and replacement of a participant's plan and the management of funding for supports under the plan).

This paper considered the need to examine less-restrictive alternatives to resolving matters than by appointing guardians. It also proposes that usage of the NDIS nominee provisions needs to be closely monitored and evaluated.

In consultation with the NDIA, OPA produced a decision-making guide in relation to current Victorian and federal laws, which seeks to navigate the complexities involved.

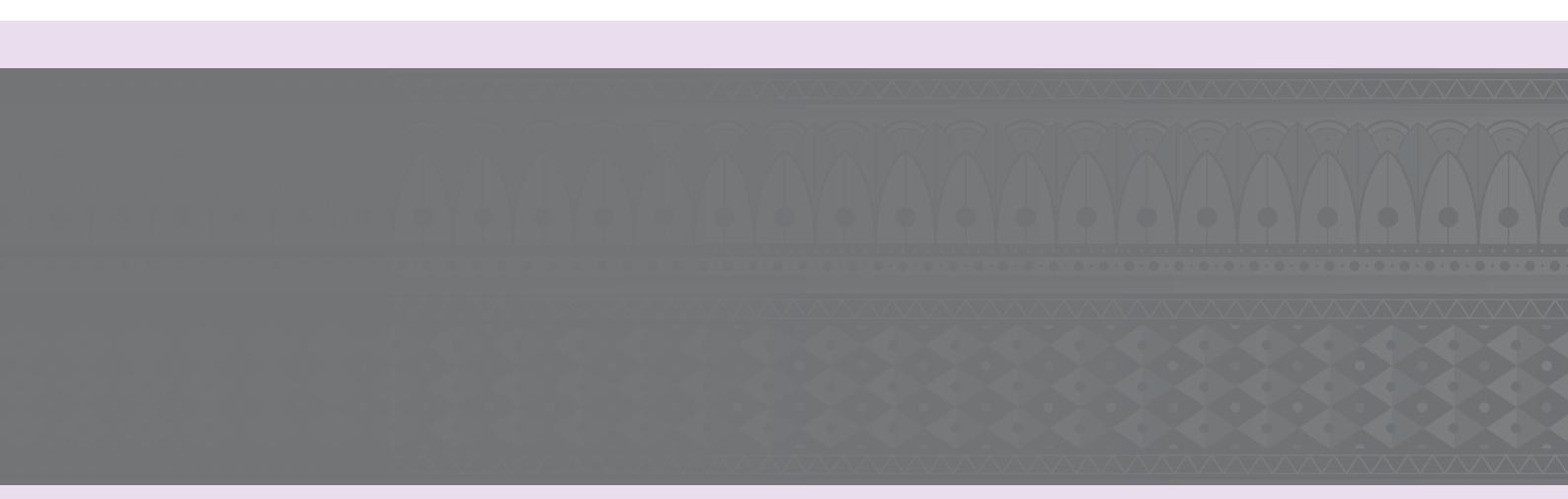
Quality and safeguarding framework

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

OPA led the preparation of the Australian Guardianship and Administration Council (AGAC) submission in relation to the 'Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework Consultation Paper.' The submission argued that application of a consumer-choice model creates difficulties for people with cognitive impairment that should not be underestimated. The submission highlighted the practical challenges faced by people with cognitive impairment, particularly where there is a lack of informal supports available to assist them to access, and be protected within, the scheme.

AGAC proposed the following principles as crucial to the development of the quality and safeguarding framework, and to guide any evaluation of outcomes in the future. These principles are shaped by the rights enshrined in the international *Convention on the Rights of Persons with Disabilities* and are:

- protection from violence, abuse, neglect and exploitation
- choice and control
- complaints resolution
- reduction and elimination of the use of restrictive practices.



The submission made 17 recommendations in response to the consultation paper, addressing the following areas:

- substitute and supported decision making
- advocacy
- complaints
- investigations
- Community Visitors
- Disability Worker Exclusion Scheme
- restrictive practices.

OPA also made its own submission to the consultation paper. OPA endorsed the recommendations contained in the AGAC submission and took the opportunity to emphasise the benefits of some existing Victorian safeguards. OPA and the disability sector have advocated for almost 30 years for the protections that exist in Victoria, and OPA is very concerned that reduced protections and deregulation in this sector will place people with disability at greater risk of violence, abuse, neglect and exploitation.

OPA's submission promoted the role of the Community Visitors Program and the legislative framework regulating the use of restrictive practices in Victoria as important human rights' safeguards for people with disability. Both submissions can be accessed on OPA's website.

Guardianship, Investigations and Advocacy

The Advocate Guardian Program provides services across three main areas: guardianship, investigation and advocacy. Guardianship orders and investigation referrals arise from matters that are before the Victorian Civil and Administrative Tribunal (VCAT), while the pathway to advocacy is more varied.

Although guardianship is the dominant component in OPA's work, staff operating in the program area are referred to as 'advocate guardians'. This reflects both the wording in the *Guardianship and Administration Act 1986* (the Act), which requires guardians to act as an advocate, and also the intention of the office to maintain an advocacy focus for all individuals with a disability.

The past year has seen an increase in demand for services overall. As in past years, there is continued strong demand for guardianship. In 2014/15, there was an increase in advocacy and significantly increased investigation demand.

The program is a statewide service, operating out of the Carlton office. As at 30 June 2015, including team leaders, there were 33 advocate guardians providing guardianship, investigations and advocacy services. The program is divided into five teams: the Intake and Response Team which receives and triages new orders; three regional teams which deal with metropolitan and rural areas; and the Community Guardianship Program, a small but important volunteer program working across the state.

On-going high numbers of people on the wait list for a guardian

During the year, there have been significant issues that have challenged the energy and resolve of the program and its committed staff.

The most critical issue for the program has been the on-going high number of people with a decision-making disability on the Pending List (Wait List) awaiting the allocation of a guardian.

When a guardianship or investigation matter is received from VCAT, as in recent years, it is not immediately able to be allocated to an advocate guardian for action. However, matters are triaged, which leads to very urgent and critical matters being addressed quickly, but a delay of many weeks for other matters.

For the person with a disability, this can mean an increase in risk and, at least, a temporary continuation of the circumstance which brought them to guardianship. For those in hospital awaiting discharge, a lengthened stay in hospital reduces independent living skills and may lead to an increase in morbidity, as well as unnecessary costs for the hospital system. For families, who may have already suffered delays in getting the matter before VCAT, there can be more delay and frustration. This impacts on OPA's intake staff who field many calls from distressed family members who were expecting an immediate resolution for their family member, once an order was made at VCAT. They want a guardian appointed 'now'.

Staff must often simply advise that they will attend to the matter as soon as possible.

Demand across the year has been greater than in 2013-2014. The number of matters in Pending has fluctuated, starting in July 2014 with a total of 98 and peaking at 112 in May 2015. The average number of matters in Pending over the year was 98, which is an increase from the previous year's average of 89.

Data for this year also reflects a general deterioration in the time taken to allocate a guardian, when compared to the two previous years. Once a guardian is appointed, the time taken to arrive at a decision remains relatively constant.

Priority Listing	Number of days prior to allocation
Temporary orders	1.75
Urgent guardianship	16.1
Urgent investigation	7.6
Other guardianship	22.2
Other investigation	23.7
Overall average	22.6

Table 1. Average waiting time to allocation of a guardian or investigator for urgent and other matters, 14/15.

For the 2015–16 year, OPA set a benchmark of an average of 20 days that a matter is held on the waiting list prior to being allocated to a guardian. Urgent matters will continue to be triaged and dealt with quickly.

In addition, a number of refinements to the intake process have resulted in efficiency gains. VCAT notices are now emailed to OPA and OPA now lodges reports by email, processes that have improved timeliness. The development of Standard Operating Procedures has ensured a smoother transition of matters from one part of the program to the other, further improving the responsiveness of guardianship services.

Increased Litigation and Complexity

There has been an overall trend to increased litigation and complexity in guardianship matters with advocate guardians increasingly required to seek assistance from the legal unit. Preliminary analysis suggests a higher number of intervention orders

being taken out by family members and others, with many of these requiring the guardian to appear as a witness or have other involvement. In addition, there have been a number of matters taken to the higher courts which inevitably involves legal support and substantial preparation by all concerned. More particularly, there has also been a tendency to longer-running VCAT matters, a greater number of rehearings at VCAT, and more interested parties seeking to return matters to VCAT for reassessment.

The program has also begun to record, in a more rigorous manner, instances of abuse and alleged abuse. Complete data is not yet available for the whole year, but analysis suggests that around 20 per cent of guardianship matters involve allegations of financial abuse, physical abuse or sexual abuse.

Substantiated abuse cases are much fewer and highlight the difficulties of establishing abuse when individuals have cognitive impairment and cannot always provide corroborative evidence. More work needs to be done in this area: improvements in recording and information technology in the next twelve months will allow more accurate data to support action on this important issue.

National Disability Insurance Scheme

The NDIS rollout remains a significant factor in disability discussions. The impact that the NDIS will have on people with disability cannot be understated. However, due to resource limitations, the program has been unable to devote the level of involvement to participants in the NDIS that such an important change deserves. OPA has maintained advocacy focus on around 50 participants in the scheme, both in shared supported accommodation and at Colanda, one of the last remaining disability institutions in this state. By involving OPA staff in their lives and in their interaction with the NDIS, it has developed an understanding of the difficulties that may be encountered in the process, and it has been able to argue for improved planning for the individual participants.

A number of successes have been achieved where the person has family or other support but the process is more problematic for those without support. OPA's view is that the NDIS planning process is extremely difficult to navigate for people with cognitive impairment, unless they have either advocacy or guardianship support. The NDIS process is also problematic at the implementation stage when a person is required to choose service providers. Despite plans being completed for all participants with whom OPA was involved in mid-2014, in many instances implementation of those plans is yet to occur and issues around consent, the role of support coordinators and the intersection with providers remain to be resolved. OPA will continue to maintain a focus on the NDIS with a view to informing the debate.

Conclusion of the Health Services Guardianship Liaison Officer role

The Health Services Guardianship Liaison Officer (HSGLO) was a joint initiative between OPA and the Department of Health and Human Services (DHHS), which concluded on 1 July 2015. A full evaluation of this program will be detailed and released elsewhere.

The target group was persons over 65 in the hospital system. This group constitutes a significant sub-section of all guardianship orders and is also a significant group within health services. The HSGLO liaised with hospitals to improve the quality of guardianship applications and also developed a toolkit to assist health care staff in navigating the guardianship system.

Preliminary analysis of the number of matters received from hospitals shows a downward trend in guardianship applications and, interestingly, a changing balance in the ratio of applications for patients in acute beds compared to those in sub-acute settings.

It is not possible to establish a definite causal nexus between the HSGLO and the trends, but they are worth noting. Certainly, if matters trend upward, now that the HSGLO role has come to an end, that would provide stronger evidence of a correlation.

Internal review of guardianship decisions

There is presently no statutory review mechanism available to people wishing to dispute guardianship decisions.

In such instances, disaffected parties often complain to OPA or seek a reassessment at VCAT. To deal more effectively with this issue, the office has instituted a policy which allows for an internal review of a decision. The office reserves the right to decline a review where no substantive grounds are made out but, if the request is accepted, the review provides recommendations to the Public Advocate, who may accept, amend or overturn the original decision.

Since this policy was introduced in 2014, there have been five formal reviews. As might be expected, these matters tend to be complex and, although small in number, involve a significant additional workload.

Guardianship

Guardianship is the appointment of a person (a 'guardian') to make decisions for an adult with a disability (the 'represented person') when they are unable to do so. The Public Advocate is appointed by VCAT under the Act as the guardian of last resort when there is no other party either able or willing to act. Guardianship continues to be the largest single component of the Advocate Guardian Program.

The office is required to accept all matters where it is appointed as guardian by VCAT. As such, in a situation of limited resources, guardianship is the area which takes priority over other roles such as individual advocacy.

	12/13	13/14	14/15
Hospital applications: all types	235	231	208
Persons in acute beds	95	92	43

Table 2. Matters received from hospitals, 12/13–14/15.



Two Sides of Guardianship

The circumstances which lead to the making of a guardianship order are many and varied, just like the people who are the subject of those orders. Two matters here illustrate the diversity of guardianship: sometimes hard work, sometimes pleasingly wry in nature.

Anna

Anna, a middle-aged woman, was suffering from a facial tumour which was increasing in size, impacting on her eye sight, and threatening to spread to her brain.

Due to her mental illness, she was unable to understand the implications of her physical condition, despite obviously suffering its effects. Application was made for guardianship and, as there were no family, the Public Advocate was appointed.

Although Anna's condition was not curative, urgent surgery was required to alleviate her discomfort and enhance her life expectancy. Following consultation with the treating team, the guardian made decisions around chemotherapy and radiotherapy and post-operative follow up.

There were substantial issues of resistance to therapy by Anna during this process, which ultimately included plastics and neurosurgery. At the conclusion of the medical decisions, the guardian needed to make decisions about accommodation. Fortunately, Anna was able to accept a move into supported accommodation.

The guardian has been required to remain involved as there are decisions required about ongoing therapy and because Anna 'chops and changes' about how she feels about treatment.

The intensity of the early involvement has decreased but Anna's circumstances continue to require attention which she receives through her care team and with the assistance of the guardian.

Bob

In April 2015, VCAT appointed the Public Advocate as guardian for Bob.

The guardianship was limited to decisions about accommodation and services. Bob is a sprightly 84-year-old who migrated to Australia from England in his 20s and married before embarking on a successful career as a plumber.

Bob was devastated when his wife passed away four years ago and, soon after, he purchased a Border Collie puppy, Buddy, who became his new loyal and loving companion.

Bob has no children or known relatives and his independence became increasing challenged in recent years with the development of vascular dementia and other age-related medical issues. An energetic Buddy and Bob continued to care for each other until January when a bystander found Bob wandering the streets, dehydrated and disorientated.

Bob has remained in hospital ever since and, when he made the decision to transition into aged care, with the support of his guardian, he was very distressed about what would happen to Buddy.

With Bob's support, the guardian was able to negotiate an arrangement with the local council and dog rescue service for Buddy to be adopted by a farmer who had been caring for Buddy. The farmer agreed to send Bob regular photos and updates on Buddy's adventures and even bring him to Melbourne for regular visits with Bob. State Trustees as Administrators also agreed to provide ongoing financial support to ensure Buddy's visits are not a burden on the farmer - a great outcome for all.

Guardianship statistics

There were 789 new guardianship matters this year. There was a carryover of 722 matters where guardianship commenced in the previous year but did not complete. The combined figure for all guardianship matters undertaken during the year was, therefore, 1511. Of these, 748 matters were finalised during the year.

As noted elsewhere in this report, there has been a significant increase in litigation and complexity of guardianship matters.

Also of note is a decline in the number of temporary guardianship orders this year; down from 46 to 35. Given that most applications for temporary orders arise from health care networks this, when considered with the decline of temporary guardianship in the previous year, suggests a changing pattern in response to critical issues by these networks.

	Community Guardianship	Guardianship	Temporary Guardianship	Total
New Guardianship matters 14/15	59	700	30	789
Carried over from previous year 13/14	58	659	5	722
Total Services 14/15	117	1359	35	1511

Table 3. Guardianship services, 14/15.

Age and disability

This year, 46 per cent of guardianship orders were for males and 54 per cent for females.

The over-65 age group comprises 58.1 per cent of all guardianship matters, a figure which continues the ratio seen for many years.

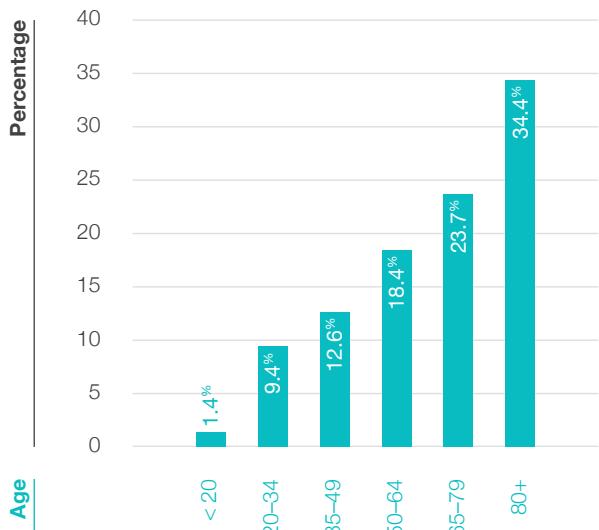


Figure 1. New guardianship clients by age group, 14/15.

The graph below shows the relative proportions of the principal disability for all people entering guardianship. There has been a slight increase in people with intellectual and psychiatric disability and a slight decrease in acquired brain injury.

There has been a more substantial increase in the proportion of people with a physical disability affecting their cognition. This includes illnesses such as stroke, as well as, neurological illnesses such as multiple sclerosis and Huntington's disease.

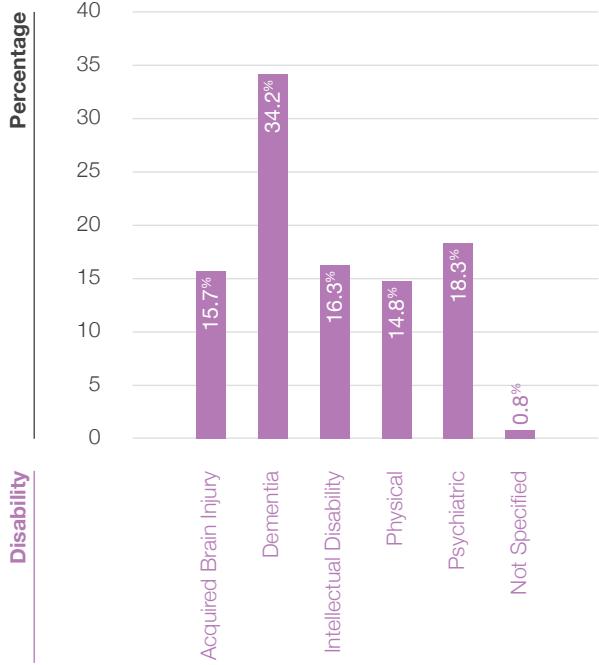


Figure 2. New guardianship clients by disability type, 14/15.

When the age of clients is plotted against disability type, it becomes apparent that different types of disability are predominant at different ages. Data this year reinforces the trends identified in earlier years: dementia is most prevalent in the 65-plus age group and is almost entirely dominant in the 80-plus age group.

The following table illustrates the relative proportions of each form of disability with the respective age groups.



Figure 3. New guardianship matters by disability type and age group 14/15 (incl community guardianships & temp).

As in previous years, the predominant guardianship issue is the need for a decision about accommodation. More than half of all guardianship orders have this as the primary issue, significantly greater than the next largest category of health care. Service issues and conflict (which includes alleged abuse) are the other main categories.

Issue Type	Total	%
Accommodation	302	51.4%
Health and medical treatment	114	19.4%
Service issues, including case mngmnt	80	13.6%
Conflict – family	42	7.1%
Other	19	3.2%
Conflict – non-family	8	1.4%
Justice/legal issues	7	1.2%
Eligibility issues	4	0.7%
End-of-life issues	4	0.7%
Sexual issues, including contraception	4	0.7%
Child protection	2	0.3%
Civil detention	2	0.3%
Not specified	405	
Total	993	100%

Table 4. New guardianship matters by issue type, 14/15.

Coercive Authority: the use of section 26 and section 27 orders

The Guardianship and Administration Act allows guardians to request police and ambulance assistance to enforce a decision of the guardian.

In such instances, a hearing must be held and a formal order must be made by VCAT under either s.26 or s.27 of the Act. The order permits police to provide specific assistance to a guardian, including entering a premises and providing physical restraint. The order provides legal authority and protection when doing so.

There has been a significant reduction in the number of s.26 orders over the year, with no matters requiring forced entry and only one matter requiring chemical restraint.

	14/15	13/14
Number requiring ambulance attendance and transport	16	24
Number requiring forced entry	0	4
Number requiring police attendance	10	16
Number requiring chemical restraint	1	6
Number requiring physical restraint	2	9
Total number of s.26 orders	29	53

Table 5. Sections 26/27 orders, 14/15.

Investigations

OPA conducts investigations under the *Victorian Civil and Administrative Act 1998* in order to assist VCAT in determining guardianship applications.

OPA may be asked to explore less-restrictive options to the appointment of a guardian or administrator, the use of powers of attorney or applications for consent to special procedures.

OPA also conducts much briefer investigations into urgent matters ('temporary investigations') to establish whether there is a need for an urgent hearing.

Whatever type of investigation is undertaken, it is of critical importance that natural justice is afforded to all people in the process and, that material gathered in the course of the investigation accurately reflects the evidence and the clearly expressed views of the parties.

To this end, OPA has invested significant resources in the last 18 months to training and developing the skill base of advocate guardians in the area of investigations.

OPA has continued to experience significant challenges in undertaking investigations due to the overall volume of all client matters. Investigation numbers have increased substantially this year but despite this timeliness has improved due to the program affording higher priority to investigations. However, this has been at the expense of timely allocation of guardianship matters – a necessary adjustment in our current circumstances.

In accord with the less restrictive intentions expressed with the Act, investigators actively consider whether there are alternatives to guardianship or administration and appropriately advise VCAT on such alternatives. On occasion, this may result in the diversion of a matter which would otherwise go to guardianship. Even if it does not, quality investigations ensure that all necessary material is available to VCAT and in this way, help to facilitate effective and timely decision-making.

Community Guardianship Program

The Community Guardianship Program is a volunteer guardianship program which gives effect to the Public Advocate's legislative obligation to involve the community in the lives of people with cognitive disabilities.

Volunteers, after induction and training, act as limited guardian for one or two individuals who are usually resident in the community. They are supported in this role by a coordinator who also provides advice, supervision and on-going training.

The number of Community Guardians varies throughout the year as, like all volunteer programs, not all Community Guardians will be available at all times. At the end of the year, there were 54 Community Guardians who had managed a total of 115 guardianship matters.

Training and support is fundamental to the success of any volunteer program. This year, there have been three training days, one devoted to induction of Community Guardians, and two updating existing Community Guardians on current issues and practice developments.



OPA undertakes investigations on referral from VCAT.

Each year, a small number of investigations are requested in regard to a highly sensitive sub-group: Special Procedures.

These are defined in the Guardianship and Administration Act and include applications for medical procedures which will render a person permanently infertile.

Claire

Claire, 39, has a severe intellectual disability.

She has recently been diagnosed with complex hyperplasia, a thickening of the lining of the uterus. The pathology indicated pre-cancerous changes and a 30 per cent chance of developing cancer.

The recommendation from specialists was for a total hysterectomy. Claire lived at home with her family, who were willing to provide consent, but they understood that consent to the procedure by VCAT was required.

As with all matters before the Guardianship List of VCAT, there is a need to establish disability. But, in and of itself, this is not enough. For VCAT to have jurisdiction, the legislation also requires evidence to be tendered to the effect that Claire, as a patient, does not understand the general nature of the procedure or is otherwise incapable of providing consent.

These are the questions that must be addressed first and, only then, does the investigator move onto the nature of the procedure itself: Material is gathered for VCAT in regard to alternative options, whether the proposed treatment is the least restrictive, what alternatives are available and so on.

The investigating process was comprehensive and included meeting with Claire, her family and carers, her GP and the gynaecologist recommending the proposed procedure.

At the meeting with Claire, it was clear she was unable to express her views or wishes, however, the investigator was able to gather a range of information from the important people in her life

which confirmed she was a very happy, active and much-loved family member and her community.

In this context, everyone was keen for her to have the necessary treatment that would minimise the risk of uterine cancer and threat to her life.

In ensuring that all less-restrictive medical treatment options had been considered, the investigator asked the treating gynaecologist if there was any other treatment options and was advised a patient with this clinical presentation could consider having a laparoscopic curette every three months, instead of a hysterectomy. However, this was not recommended as the preferred treatment for Claire given it would require her to have this as a regular procedure under a general anaesthetic.

In the context of her disability, and the difficulty she faced in understanding the need for the treatment, including her fear of medical procedures, the risks associated with regular general anaesthetics, along with the challenges of providing pre and postoperative care, this option was considered not to be in her best interests.

At the hearing of this matter, VCAT considered the report of the investigator, took up the opportunity to speak via telephone with the treating gynaecologist, and provided an opportunity for Claire's family and carers to make further comment.

From this, VCAT accepted the evidence that Claire, as a patient, could not give informed consent to the procedure, that all less-restrictive alternatives had been considered and that it was in her best interests to have a hysterectomy.

Investigation statistics

New investigations for the year increased from 277 to 343, and total investigations increased from 362 to 438.

At the same time, temporary orders, which are shorter-term in nature, were similar in number (60 against 57 last year) but the percentage of temporary orders decreased to 13.6 per cent.

	Investigation	Temporary Investigation	Total
New investigations	284	59	343
Carried over from previous year, 13/14	94	1	95
Total 14/15	378	60	438

Table 6. Investigation matters, 14/15.

As with guardianship, the greatest number of applications are in the over-65 age group, a reasonable number in the 50-64 age group and substantially fewer applications for the younger age cohorts.

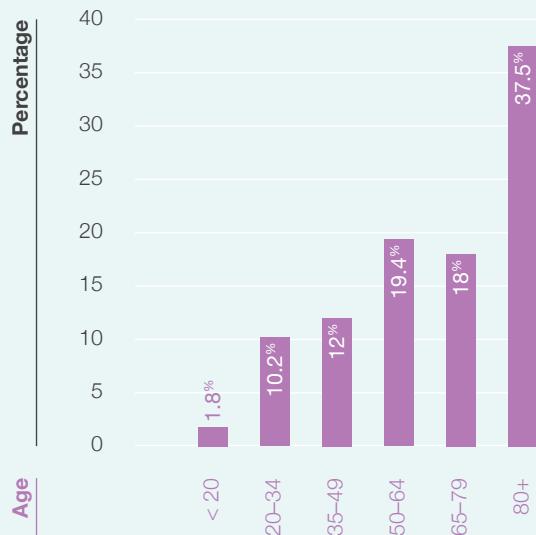


Figure 4. New investigation matters by age group, 14/15.

The graph below shows the relative proportions of the principal disability for all people referred for investigation. Disability types for investigation are not significantly different to those for guardianship.

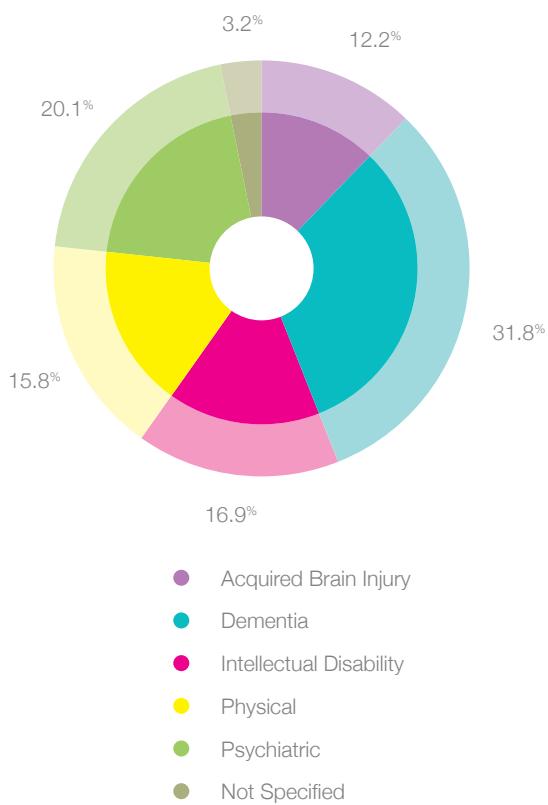


Figure 5. Disability profile of investigation matters, 14/15.

There are a number of significant ways in which investigation issues differ from those of guardianship. Evidence of the need for an order, evidence of capacity and evidence of disability comprise almost one third of all investigations.

Such issues arise when material presented to VCAT is inadequate in nature, insufficiently detailed, or contradictory (two parties may lodge conflicting evidence). Investigations also look at financial matters and the use and occasional abuse of enduring powers of attorney providing advice to VCAT on the need for administration or other remedies.

A smaller number consider matters such as abuse and neglect and, as noted in the case study, an even smaller but significant cohort concerns special procedures.

Issue Type	Total	%
Evidence of need for order	90	19.7%
Accommodation	65	14.2%
Conflict between individuals	45	9.8%
Possible financial exploitation	38	8.3%
Evidence of capacity	36	7.9%
Health care and treatment	36	7.9%
EPA financial	31	6.8%
Welfare and safety at risk	31	6.8%
Evidence of disability	25	5.5%
Neglect - self and others	13	2.8%
Other	13	2.8%
EPA medical	9	2.0%
EPG guardian	8	1.7%
Justice/legal issues	7	1.5%
Possible physical/emotional/other abuse	6	1.3%
Special procedure - sterilisation of adult	4	0.9%
Special procedure - termination of pregnancy	1	0.2%
Not specified	75	
Total	533	100%

Table 7. Investigation matters by issue type, 14/15.

Advocacy

Advocacy involves standing beside the person with a disability, promoting their rights and interests and, when necessary, protecting them from exploitation, abuse and neglect.

Advocacy occurs in the context of guardianship and investigation, but OPA also undertakes work directly as an individual advocate for people with a disability.

Advocacy services provided by the OPA have developed from the office's understanding of the Guardianship and Administration Act and the principles which underlie its advocacy practice are contained within the Act. This statutory basis for intervention is one of the defining features of advocacy provided by OPA staff.

Advocacy requests frequently come directly from the person or close associate, whereas

guardianship and investigation matters usually arise by the application of a third party to VCAT.

Consequently, in the provision of advocacy, OPA is often more able to work directly with the person with disability and more actively engage in the promotion of their wishes.

The majority of advocacy is undertaken by the Advocate Guardian Program but advocacy is also provided by the OPA Legal Unit, the Disability Act Officer, the VCAT Liaison Officer and the Advice Service.

Advocacy referrals are one area of work over which OPA has discretion. As in previous years, capacity issues have required that OPA redirect a number of referrals to other organisations rather than take on advocacy itself.



Two sides of Advocacy

Sometimes advocacy turns up surprising issues. These issues may be disturbing, as the first case study illustrates, or quixotic as the second case study suggests.

David

David lives in a group home in Western Melbourne with four other young men, all with intellectual disability.

OPA was asked to undertake advocacy for David to help in the development of a revised disability support plan. David was quite talkative and advocacy was going well: he said that he knew the area well as he had lived there a long time, liked the house and would like to stay there.

But then things took a twist: he confided that he was frequently assaulted by a fellow resident. This led to a discussion with staff who confirmed the accusations and advised that, while they had reported the matter, progress on a resolution was taking quite some time.

The OPA advocate engaged in a protracted advocacy with the service providers and DHHS, which ultimately led to David's assailant being relocated from the house. The situation was complex: OPA had a responsibility not just to David but also to his assailant. Because OPA had to present one side, a local advocacy agency was asked to represent David's assailant.

It was important to ensure all parties had input into the final outcome.

Enrico

On the other hand, Enrico was another young man, with intellectual disability who lived in a group home. No-one had reported any particular problems but there were some complexities in his service provision and the advocate was requested to assist in the development of a detailed person centred plan.

The advocate was told that Enrico enjoyed his leisure activities which included horse-riding. Imagine her surprise then when she asked about this to be told "I don't like horses".

Maybe at one stage he did, or maybe he just went along with what was on offer. In any event, when asked the direct question, Enrico was able to clearly state what he enjoyed and what he did not.

Enrico has kept up with everything else: he still lives in the same house, lives with the same companions and goes to the same day placement - but he enjoys swimming instead of horse-riding, a choice nominated by him.

Advocacy statistics

The number of overall advocacy matters increased this year by 4.4 per cent despite a decrease in new individual advocacy matters. This is because:

- advocacy involvement in the NDIS, which commenced last year, has continued to run throughout the year, with the office committed to engaging with the NDIS and supporting participants in the trial site.

- Disability Act Officer interventions, which include advocacy on supervised treatment orders, have also increased this year.

Due to a change in recording, matters previously marked as VCAT liaison advocacy are now recorded with other VCAT liaison officer interventions.

Carried over from 13/14	Advocate Guardian Program (new matters)	Disability Act Officer (new matters)	Total
157	106	118	381

Table 8. Advocacy matters, 14/15.

The age profile of matters for which advocacy services have been provided is significantly different to guardianship and investigation, being more evenly distributed across the age spectrum with the bulk of advocacy services being delivered to the under 65 age group.

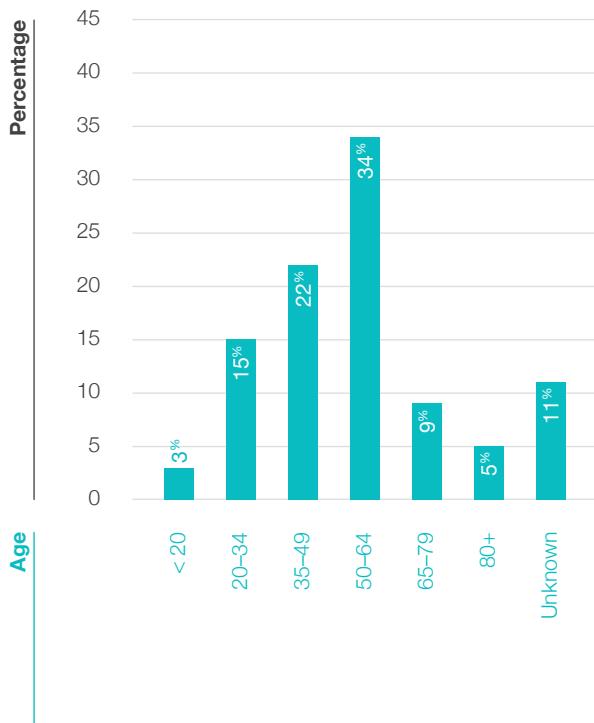


Figure 6. New advocacy matters by age group, 14/15.
Note, percentages do not total 100 due to rounding off.

This broad picture is consistent with previous years, however, this year there is a larger cohort in the 50-64 age group which is reflective of the age of a number of the participants in the NDIS trial site.

People with intellectual disability are the largest group receiving advocacy services.

This figure is substantially higher this year than in previous years (30 per cent in 2012-13) but this is explained by the inclusion of participants in the NDIS and supported decision making projects where intellectual disability is the predominant group.

There are also a substantial number of matters where the nature and extent of disability is not clear. Advocacy can be useful in such cases because it allows involvement where the stricter provisions of guardianship and investigation might otherwise rule out assistance.

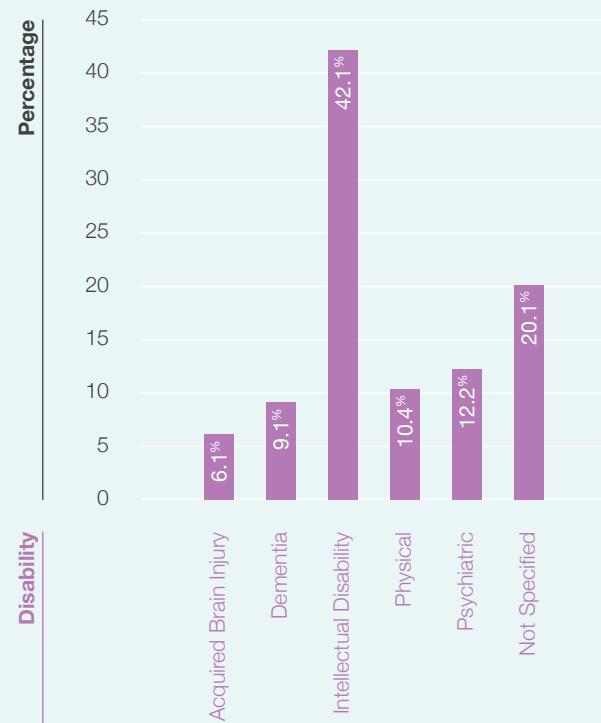


Figure 7. Disability profile for advocacy matters, 13/14.

Accommodation – or, more specifically, the lack of suitable accommodation- is the issue which generates the most requests for advocacy.

The NDIS advocacy project is the next largest advocacy type but, there are a range of issues within that cohort which are similar to that of the wider population.

A smaller number of referrals relate to issues such as health care and treatment, service issues including case management, and the welfare and safety of a person at risk.

Issue Type	Total
Accommodation	30
Child protection	1
Civil detention	2
Conflict - family	3
Conflict between individuals	2
Evidence of need for order	2
Health and medical treatment	2
Health care and treatment	6
Justice/legal issues	10
NDIS	29
Neglect - self and others	4
Other	7
Possible physical/emotional/other abuse	2
Service issues, including case management	4
Special procedure - termination of pregnancy	1
Welfare and safety at risk	4
Not specified	32
Total	141

Table 9. New advocacy matters by issue type, 14/15.

Short-term advocacy

The Intake and Response Team is responsible for managing referrals which are received under the SSDTA.

Not all advocacy interventions are about complex issues requiring significant involvement of time and resources.

OPA records these brief interventions, which are more than mere advice, as short-term advocacy. Short-term advocacy is provided by all arms of the office and may be undertaken by the Advocate Guardian Program, the VCAT Liaison Officer, the Legal Unit, the Advice Service or Volunteer Programs.

Short-term advocacy provides an important and immediate response to the issue at hand and, in some circumstances, leads on to formal advocacy or guardianship. There has been no significant change in the number of advocacy matters from last year.

Carried Over	New STA	Total
57	126	183

Table 10. Short-term advocacy matters, 14-15.

VCAT Liaison

The VCAT Liaison Officer provides an important liaison function at VCAT, enhancing cooperation between VCAT and OPA, assisting clients and interested parties at VCAT, and providing advice to VCAT on OPA capacity and functions.

The Liaison Officer also assists OPA staff in appearances before the VCAT, when required. This year has seen a substantial increase in the number of VCAT liaison actions which has tested the limits of OPA's resource.

	13/14	14/15
VCAT Liaison Officer Interventions	753	1077

Table 11. Short-term advocacy matters, 14-15.

Informed consent, consent and compliance

When a person is asked to agree to something, it is usually expected that they will provide consent to it deriving from a process of understanding the information, weighing up the options and then agreeing to it. *The Charter of Human Rights and Responsibilities Act 2006* (the Charter) requires that, when a person undergoes medical treatment, this is done with their “full, free and informed consent”.

Where people have diminished capacity to consent to something, for example medical treatment, but agree to it anyway, their consent is often accepted. Perhaps they consent because they trust the person proposing the treatment. There are some people who are unable to provide consent at all but are compliant with undergoing treatment. Perhaps it is their habit to be so.

Is it right to proceed with treatment based on consent that is not informed or is mere compliance?

The answer to this question is complicated by two principles enshrined in the law applying to people with diminished or limited capacity: that one adopts means that are least restrictive of a person’s freedom of decision and action as is possible in the circumstances and one gives effect to a person’s wishes wherever possible.

These questions and principles have come to the fore in relation to whether a person should be subject to compulsory treatment under the *Disability Act 2006* and whether a person should be subject to compulsory treatment under the *Mental Health Act 2014*. They are live issues for people living in aged care who are subject to pharmaceutical drugs to restrain or sedate them.

Mental Health Act

The new Mental Health Act came into effect on 1 July 2014. The Act sets out what is meant by

informed consent, but this only applies to people who are subject to a compulsory treatment order under the Act.

If a person is not a compulsory patient, the standard of consent required to undergo psychiatric treatment would be that set out in the common law (or as articulated in the Charter of Human Rights and Responsibilities Act above). But there are many people who are unwell who could not provide informed consent. Can these people be provided with treatment if they are unable to provide informed consent? Is it right and proper to accept a person’s compliance as sufficient to undertake Electroconvulsive Therapy (ECT) or take psychotropic medication? If such a person can’t provide informed consent to ECT, is it right that a family member can step in to consent to it on their behalf?

Many would argue that it is better for a person with mental illness that their practitioner accepts the person’s uninformed consent to, or compliance with, the psychiatric treatment than to wait for the person to become so unwell that they are made subject to a compulsory treatment order. It is better because the person does not become seriously unwell, which will be distressing, and because it avoids the stigma of being subject to a compulsory treatment order.

Others would argue that, in such cases, treatment is not being determined by the person but by the professionals involved. This is contrary to patients’ rights and there is no oversight or scrutiny that the treatment is justified in all the circumstances.

Should family members be able to consent to psychiatric treatment for the person who is unable to consent to it? This may provide some scrutiny. It can be argued that this is less restrictive and avoids the stigma of compulsory treatment. However, what if the family member makes decisions which are not based on the best interests of the person? Is there a conflict of interest?

These are some of the legal and ethical dilemmas facing OPA since the introduction of the Mental Health Act that we need to work through next year.

Disability Act

During the year, a similar issue arose under the Disability Act in relation to a person agreeing to a very high level of supervision, monitoring and restriction of his freedom of movement. Usually when a person with an intellectual disability is subject to such a high level of scrutiny (that amounts to detention), VCAT makes orders to permit this through a supervised treatment order. On this occasion, VCAT found that the person was agreeing to these restrictions and so it was not necessary to make an order. It was not as though the person understood all that he was agreeing to, but his agreement was accepted as real and, therefore, it was less restrictive to proceed on the basis of his agreement than to have an order requiring his treatment.

In this case, it was very important to the person that it was his decision to consent to the restrictions. This affirmed his dignity. It also had value in that it showed the man's commitment to the treatment he was undertaking.

Residential aged care

There are many people in aged care with dementia and other degenerative cognitive conditions who develop difficult behaviour as their condition deteriorates. For many of these residents, the amelioration of their behaviour is through medication. The medication does not treat their underlying mental health condition, but it may attend to their anxiety or depression. The medication may sedate them. Medication that is used to contain a person's behaviour is called 'chemical restraint'.

Who consents to chemical restraint on behalf of residents? The Guardianship and Administration Act defines medical treatment in such a way that it does not include the administration of pharmaceutical drugs. Through the application of this law, the administration of chemical restraint is the responsibility of the treating doctor.

But is this right, or sufficient, to ensure the best interests of the person in aged care? Aged care facilities often lack sufficient staff to provide

full care to their residents. Is there a risk that chemical restraint is used to contain people who are being difficult because the facility lacks staff who can tend properly to the person's needs?

Community education

During the year, the Legal Unit undertook 20 presentations in the community on laws relating to medical treatment. Many of these presentations related to planning ahead for a time when people may not have the capacity to make decisions for themselves. Who will consent on their behalf? When should treatment be refused? What is palliative care? What happens if I want to donate organs?

In brief

The legal unit notes:

- significant increase in unit casework this year over last year
- litigation in the Supreme, County, Magistrates', Family and Coroner's Courts as well as VCAT
- significant involvement in the protective jurisdiction of the Children's Court for parents who have disabilities
- an improvement in the development of extended leave plans for people subject to compulsory treatment under the Disability Act.

Policy and Research

Introduction

The main systemic advocacy work undertaken this year by the Policy and Research Unit has been in two key areas: advocating for the development of the NDIS so that it appropriately caters for people with cognitive impairments; and advocating for improvements to the ways our service system seeks to prevent, and respond to, violence, abuse and neglect experienced by people with disability.

As usual, this work has been undertaken in a variety of ways, including through the preparation of public submissions, articles and reports, public presentations, appearances before review bodies, and direct dealings with government.

As described earlier in these pages, OPA's NDIS work has included two substantial submissions on the proposed quality and safeguarding framework and production of a discussion paper on 'Guardianship and the National Disability Insurance Scheme.' OPA also gave a presentation on 'NDIS and the guardianship jurisdiction' to an AGAC meeting in Adelaide, and a presentation on 'People with cognitive impairments and the NDIS' at the National Disability Summit in Melbourne.

Violence and abuse

OPA's main systemic advocacy work on violence and abuse experienced by people with disability took the form of submissions to four important inquiries. This work, described later in these pages, included the preparation of submissions to the Victorian Ombudsman, the Senate Community Affairs References Committee, the Victorian Parliament's Family and Community Development Committee, and the Royal Commission into Family Violence. OPA also gave oral evidence this year to the first three of these inquiries.

The unit has also undertaken some other significant work in this broad field.

At-risk adults

OPA has argued for several years that an 'investigation gap' exists in relation to at-risk adults in the general community. An at-risk adult is a person at risk of serious harm but where the lack of an immediate medical emergency or criminal activity means that emergency services are not best placed to respond. One solution to this is for OPA to be given the power to investigate the abuse, neglect or exploitation of people with impaired decision-making ability, as has been recommended by the Victorian Law Reform Commission. This argument was advanced by OPA this year in a range of ways, including in submissions to the above-mentioned inquiries, and in an article entitled 'Modernising adult protection in an age of choice' that was published in the *Australian Journal of Public Administration*.

Elder abuse

One key group of at-risk adults is older people who may be at risk of elder abuse. OPA continues to maintain a key interest in improving Victoria's ability to prevent and respond appropriately to elder abuse. This year, OPA gave a presentation on 'Improving our protection of at-risk adults' at the Third National Elder Abuse Conference in Perth. OPA is also represented on the organising committee for the Fourth National Elder Abuse Conference, which will be held in Melbourne in February 2016. In addition, OPA, once again, took an active role in the advisory group that has monitored the Victorian 'Elder abuse prevention and response guidelines for action 2012-14', and has been involved in discussions about the composition

of the next iteration of these guidelines. OPA has also begun a research project examining the incidence of elder abuse among guardianship clients.

National Disability Services ‘Zero Tolerance’ project

OPA continued its participation in an important initiative led by National Disability Services to increase the knowledge among non-government disability service providers of abuse prevention and response strategies. This significant national project resulted in the production of several important resources including reports and a practical advice guide.

Reform of substitute decision-making laws and practices

Guardianship

OPA continues to work with the Victorian government as it considers possible reforms to Victoria’s guardianship laws. A new Guardianship and Administration Bill was introduced into parliament but lapsed in the lead-up to the Victorian State election in November 2014. This year, OPA has continued to advocate for consideration of the reforms recommended in 2012 by the Victorian Law Reform Commission.

A new Powers of Attorney Act

A new Powers of Attorney Act was passed in 2014 which introduces a range of important reforms, including some new safeguards. The Act, which is operational from 1 September 2015, will enable individuals to appoint attorneys for financial and/or for personal matters (in effect merging the current Enduring Power of Attorney (Financial) and the Enduring Power of Guardianship).

One key reform is the introduction of a new form of supported decision-making appointment. People will be able to appoint a ‘supportive attorney’ to assist them to collect information and to implement decisions (other than significant financial transactions), while retaining for themselves decision-making authority. OPA has been involved in advising the government on this important new piece of legislation and will play a key role in educating the public about it. Further details are in the Advice and Education section of this report.

A new Mental Health Act

OPA has also been involved in advising the government about some of the operational challenges that have accompanied the implementation of the new Mental Health Act, which came into operation on 1 July 2014. This Act introduced a range of important initiatives, including the role of nominated persons, the use of advance statements, and the creation of the office of the Mental Health Complaints Commissioner.

Supported decision making

OPA’s volunteer supported decision-making pilot project (part-funded by the Victoria Law Foundation) was in operation for the full year, and it has seen 18 supporters provide decision-making assistance to 18 participants. The project is now drawing to a close and is being evaluated. (Further details are in the Volunteer Programs section of this report).

OPA gave two public presentations on supported decision making this year: to the La Trobe University Annual Roundtable on Intellectual Disability Policy; and to the Barwon Disability Advocacy Network Conference.

Australian Law Reform Commission

The final report from the Australian Law Reform Commission inquiry into *Equality, Capacity and Disability in Commonwealth Laws* was publicly released this year (OPA partnered with its South Australian colleagues at OPA (SA) in providing a detailed submission to this inquiry).

The final report from this inquiry contains a number of important reform proposals and includes significant reform recommendations about the following topics: the NDIS and its governing legislation; aged care legislation; the regulation of restrictive practices; and the promotion of supported decision making.

Other systemic work

Parents with disability

OPA completed the second report in its work on the removal of children from parents with disability. This report, which will be publicly available later this year, focuses on the removal of children from parents with disability under the state child

protection system. The report argues that children are too readily removed from the care of parents with disability.

OPA also made a submission to the Victorian Parliament's Legal and Social Issues Committee in its inquiry on proposed amendments to the *Children, Youth and Families Act 2005*.

Research to help people with an acquired brain injury

OPA has continued to oversee three projects being funded by a private donation that all seek to promote the rights and wellbeing of people with an ABI. RMIT's Centre for Innovative Justice, in partnership with Jesuit Social Services, has been consulting with people with an ABI and justice system stakeholders to reduce the number of people who are in prison for lack of adequate ABI support.

A team of Monash University researchers is producing educational materials and training for current and future members of the judiciary, legal profession and Victoria Police. Meanwhile, Diverge Consulting is running workshops across Victoria for staff working in the justice and ABI sectors so they can build understanding and working relationships. OPA expects these projects will result in a reduced imprisonment rate for people with an ABI.

Health Services Guardianship Liaison Officer

This year was the final year of operation of the two-year pilot Health Services Guardianship Liaison Officer position at OPA. The project, which sought to improve the use of the guardianship system by health services, came to a close in June 2015 and was positively evaluated earlier this year by the National Ageing Research Institute.

During her two years as Health Services Guardianship Liaison Officer, Antoinette Libertone: provided extensive amounts of advice both to OPA staff and to health services clinicians; ran some very well-attended education and information sessions; and finalised the 'Decision Making' resource that will, later this year, form part of the Best Care for Older People Everywhere toolkit. (The toolkit is available on the Department of Health and Human Services website). The 'Decision Making' resource contains key information, examples and guides that explain the operations of, and interface between, OPA, VCAT and health services. The resource, among other things, aims to ensure that health

services into the future make optimal usage of the guardianship system.

Sterilisation

OPA began work this year on a project that is seeking improved national data collection in relation to sterilisation applications concerning people with disability.

OPA is conducting the work, which will be completed towards the end of 2015, on behalf of the AGAC. The work is being funded by the Commonwealth Attorney-General's Department and stems from a 2013 Senate Community Affairs References Committee report on this topic.

Policy and Research Reference Group

The policy and research reference group began in 2010 and its purpose is to seek advice from the disability and aged care sectors about the research and systemic advocacy work that OPA undertakes. This year, the group, among other things, provided advice on the development of OPA's next Disability Action Plan. OPA has begun to reinvigorate the workings of this group, with the scheduling of more frequent meetings and the drafting of terms of reference to guide the group's operations.

Other work

In the past year, OPA prepared nine significant submissions. In addition to those already mentioned in these pages, they included a submission on the review of the Charter, and a submission on proposed legislative reforms concerning criminal investigation powers.

OPA also gave a significant presentation on the topic 'Who decides and on what basis? Decision making at the end of life' at the International Conference on End of Life in Brisbane. This work will be used to inform OPA's submission this year to an important inquiry being conducted on end-of-life choices by the Victorian Parliament's Legal and Social Issues Committee.

OPA was represented this year on a number of important advisory bodies, including:

- Department of Health and Human Services Elder Abuse Prevention and Response Advisory Group
- Fourth National Elder Abuse Conference Organising Committee
- Mental Health Act Implementation Project Advisory Group
- Mental Health Advance Statement Project Advisory Group
- Department of Health and Human Services Advance Care Planning Strategy Implementation Advisory Group
- Victoria Police Priority Communities Division reference groups (seniors and disability)
- Seniors Rights Victoria Council.

The unit hosted one intern this year, Grace Poland, whose work explored taxi usage by people with disability.

Abuse inquiries

Inquiries into violence and abuse of people with disability in institutional settings have been a feature in the policy environment this year with three being announced within a few months of each other:

- the Victorian Ombudsman investigation into the reporting and investigation of allegations of abuse in the disability sector
- the Senate Community Affairs References Committee's inquiry into violence, abuse and neglect against people with disability in institutional and residential settings
- the Victorian Parliamentary Inquiry into abuse in disability services.

OPA made submissions to all three inquiries and the Public Advocate made appearances at the Senate Inquiry and at the Victorian Parliamentary Inquiry in June.

OPA also made a submission to the Victorian Royal Commission into Family Violence, due to the commission's interest in the needs and experiences of people with a disability and complex needs affected by family violence.

The Public Advocate receives regular formal notifications of violence in group homes that meet the criteria for orders to be made under the *Family*

Violence Protection Act 2008 or the *Personal Safety Intervention Orders Act 2010*. Violence between residents in group homes is the top category of notification by Community Visitors to the Public Advocate. Yet, in practice in group home settings, there appears to be little knowledge or understanding of the application of either act. This is an issue of particular interest which OPA drew to the commission's attention.

At the end of the year, only the Ombudsman's Inquiry findings had been published. The Ombudsman described the system for reporting and investigating abuse in disability settings as a "mishmash" of legislative, financial and service-delivery arrangements and a system that is fundamentally failing to deliver protection for people with disability.

She concluded that a significant gap in Victoria is that there is no one body responsible for receiving and responding to abuse allegations or for monitoring and reviewing incidents and addressing the systemic issues that allow abuse to occur in the first place and that prevent it, once it is known to be occurring.

The Public Advocate is supportive of the Ombudsman's chief recommendation for a single independent statutory oversight body responsible for dealing with incidents of serious abuse of people with disability and advocacy to support decision-making by people with disability.

The Public Advocate supports further research being conducted on which particular agency might be best placed to take on the role of administering advocacy.

The Ombudsman will produce a Stage 2 report, to be tabled later in 2015. The Senate inquiry report is due on 16 September 2015 and an interim report from the Victorian Parliamentary inquiry is due on 31 July. The Royal Commission into Family Violence has until 29 February 2016 to report.

OPA understands that federal ministers will consider recommendations from the Senate Inquiry, the Victorian Ombudsman's Inquiry and the Victorian Parliamentary inquiry in their determinations around an NDIS quality and safeguarding framework.

Disability Action Plan report

OPA has a *Disability Action Plan 2012-2015*. The plan is a requirement of section 38 of the Disability Act and covers the four outcome areas in the Act relating to:

- reducing access barriers
- promoting employment
- inclusion and participation of people with disability
- promoting positive attitudes to people with disability.

The plan and its development is the responsibility of the Manager, Policy and Education, and it is included in the office's business planning processes.

Some examples of the actions include:

- the availability of seven of OPA's key publications in Easy English
- interns with disability undertaking research projects in the office
- supporting staff with disability to attend meetings in the office through the provision of attendant carers and other accessibility assistance
- advocacy work that promotes the human rights of people with disability in submissions to public inquiries, such as OPA's submission to the review of the Charter and OPA's submission to the consultation paper on the National Disability Insurance Scheme Quality and Safeguarding Framework.

A new plan for 2016-19 is being developed.

Advice and Education

The Advice and Education Service Team staffs the Advice Service and the Community Education Program.

Advice Service

OPA provides an advice service which offers information and advice on a diverse range of topics affecting people with a disability. Topics range from general information on administration and guardianship, applications to VCAT, powers of attorney and medical consent, to allegations of financial or physical abuse, and end-of-life decisions. The nature of these calls is often complex, requiring a high level of sensitivity, expertise and sound judgement.

Year in review

This year, the Advice Service has handled 14,251 enquiries, a 3 per cent increase from last year. (See Figure 8). This is the first year for many that the Advice Service has experienced an increase in enquiries. It is also important to note that, due to technical problems with the telephone system,

data about the number of calls received was unavailable for a number of weeks. Therefore, the total figure is likely to be higher than that reported.

Ninety-five percent of our enquiries are by telephone, with the remainder email, letter or in-person enquiries. There has been a 90 per cent increase in the number of emails received from last year and they make up a larger percentage of total enquiries than in previous years.

Caller patterns remain consistent with last year. The majority of calls are from family and friends (40 per cent), followed by health and community services (33 per cent). The next largest group is callers ringing on their own behalf (15 per cent). A large number of these calls (42 per cent) are from people who do not have a disability, seeking advice about making enduring powers of attorney.

Again, following a consistent pattern, the majority of calls related to guardianship and administration (30 per cent) and enduring powers of attorney (27 per cent). The other significant category is calls about medical consent and health care treatment (12 per cent). (See Figure 9).

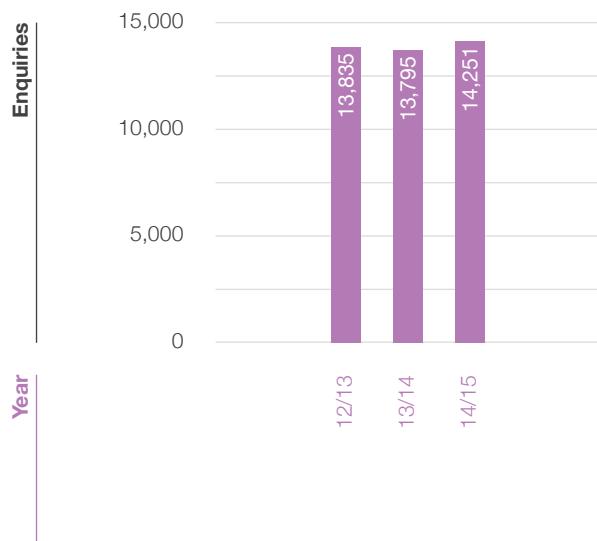


Figure 8. Number of Advice Service calls 12/13 to 14/15.

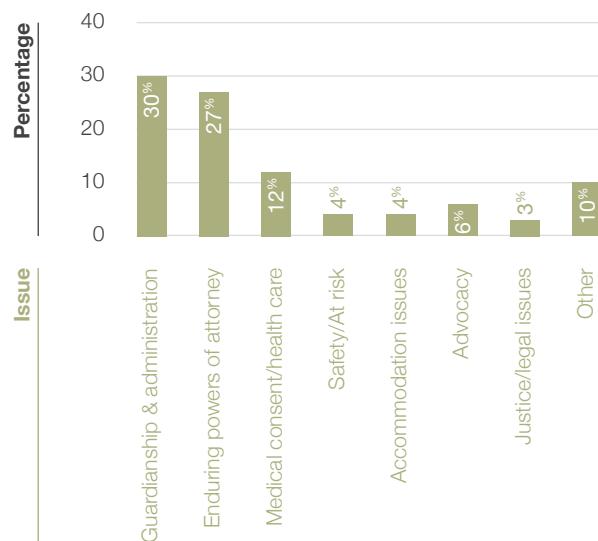


Figure 9. Percentage of Advice Service calls by issue, 14/15.

The majority of callers to the Advice Service (76 per cent) were provided or sent information. Another 11 per cent of callers were referred to an outside organisation and 3.8 per cent of calls were referred to the Community Visitors Program.

Short-term advocacy

The Advice Service has been accepting short-term advocacy matters for the last two years and, in the last year, has dealt with 14 short-term advocacy matters. These matters generally relate to service or communication issues for the person with a disability and usually involve follow-up phone calls, assistance with correspondence or clarification of information. The duration of short-term advocacy matters is between 24 and 72 hours.

Medical or dental treatment where there is no person responsible to consent (Section 42K notices)

In non-emergency cases where a person requires medical or dental treatment but cannot consent to the treatment, and there is no person responsible available and willing to provide that consent, a medical or dental practitioner is required to lodge a notice under section 42K of the Act. This year, the Advice Service received 470 section 42K notices, a 5 per cent decrease from the number registered last year. Eighty-one percent of notices met the legislative requirements.

The most common reasons why a notice did not meet legislative requirements were because there was a person responsible who could provide consent, or the procedure did not meet the definition of medical treatment under the Act. This year there was an increase in the number of notices that did not comply with the legislation, suggesting the law, particularly in relation to person responsible provisions, is not clearly understood by medical and dental practitioners.

Medical research where there is no person responsible to consent (Section 42T certificate)

The Act allows for the person responsible to consent to a medical research procedure on behalf of a patient who is unable to consent.

In situations where there is no person responsible, or they cannot be contacted, the practitioner completes a section 42T certificate and submits it to OPA. This year the office has registered 14 section 42T certificates, a 91 per cent decrease on the number registered last year. This variability is due to a research project which was required to classify all participants as 'not competent to consent'. The project concluded in early 2014 and the number of submitted notices subsequently reduced to much lower levels, consistent with previous years.

Ninety-three percent of submitted certificates complied with the legislative requirements. The reason for non-compliance was the notice being submitted outside the required time-frame.



Mrs B

OPA's Advice Service received via mail original general power of attorney documents completed by Mrs B. The documents included a completed Statement of Acceptance from an enduring power of attorney (financial) which had been incorrectly attached. The address for Mrs B was a residential aged-care facility. Information on OPA's database indicated that previous concerns had been raised about Mrs B's decision-making capacity.

An adviser contacted the aged-care facility to inform Mrs B that OPA would be returning the documents as OPA does not register or store them. The adviser also wanted to ensure Mrs B and the facility were aware there were some anomalies with the documents and to clarify the issue of Mrs B's legal capacity to complete power of attorney documents.

Discussions with the facility manager revealed they had arranged for a medical assessment of Mrs B as they believed she did not have the capacity to complete the documents, and they held concerns regarding the motives of the friend appointed as attorney. The adviser provided information about enduring powers of attorney so the documents

could be completed correctly if Mrs B had the capacity to do so. The adviser also outlined the process of applying to the Guardianship List of VCAT for an administration order to manage Mrs B's finances if she was assessed as not having the capacity to make financial decisions and was in need of protection from financial abuse.

About one month later, Mrs B's friend came into OPA's office to clarify why the bank would not accept his authority to act for Mrs B under the general power of attorney. The adviser explained the documents had been returned to Mrs B with advice that there were some issues with them and the facility was assisting Mrs B with this matter. The adviser suggested he check the outcome of this with the facility.

Concerned about potential financial risk for Mrs B, the adviser notified the facility about the friend's attempt to use his authority at the bank. The facility advised that following an assessment that confirmed Mrs B no longer had capacity to manage her finances, an independent administrator had been appointed by VCAT and Mrs B's friend was aware of this.

New powers of attorney laws

Powers of attorney laws will change on 1 September 2015 with the commencement of the *Powers of Attorney Act 2014*. This Act consolidates the enduring power of attorney (financial) and enduring power of guardianship into one enduring power of attorney. It also introduces supportive attorney appointments, allowing a person to appoint someone else to support them to make decisions.

These changes have a significant impact on the work of OPA, in particular for the Advice and Education service. A Legal Education Project Officer was employed for 12 months as part of the Advice and Education team to revise OPA's existing community education resources and to develop new resources.

As part of this process, in early 2015, OPA evaluated the publication *Take Control: A kit for making powers of attorney and guardianship* through an online survey involving 250 organisations and 50 individuals. OPA, in partnership with Victoria Legal Aid, distributes approximately 40,000 copies of *Take Control* annually.

The results of the survey confirmed that *Take Control* is highly regarded by professionals who use it to inform themselves and their clients, and by individuals who are making enduring powers of attorney. The most positive features identified include the use of plain language and the legal

information and forms being available in the one booklet. The feedback also suggested that introducing personal stories into *Take Control* would improve readers' ability to understand the choices available to them and the considerations that should guide their choices.

The evaluation of *Take Control* has informed the development of the new edition and the development of a new booklet about making supportive attorney appointments.

Community Education Program

The office coordinates a Community Education Program where staff address both professional and community audiences on a range of topics including the role of OPA, guardianship and administration, enduring powers of attorney and medical decision-making.

This year, the program delivered 126 presentations to a total audience of 5312. This is a 30 per cent decrease in the number of events than last year, and a 24 per cent decrease in the total audience number. (See Figure 10).

The program relies on staff across the office undertaking the sessions and is, therefore, affected by the level of staff resources. Due to increasing demand on resources, particularly in the guardianship program, OPA has continued to offer a calendar of training sessions run from the Carlton office that offers fewer sessions for larger audiences rather than the previous approach of running small group sessions on-site at organisations and community groups.

It has also been necessary to become more rigorous in applying requirements for minimum audience numbers and limits on regional travel.

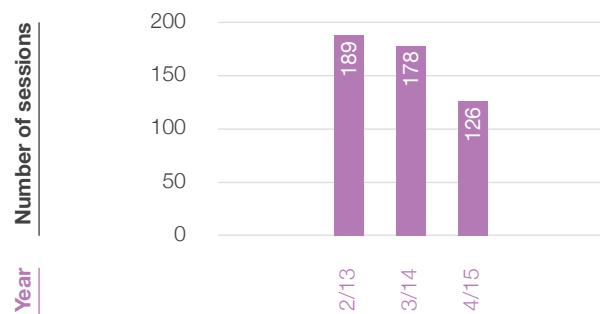


Figure 10. Number of education sessions, 12/13 to 14/15.

Consistent with the trend seen over the last two years, more education sessions were provided to professionals (68 per cent) than to members of the public (19 per cent); the remainder were students. (See Figure 11). The most commonly presented topic was on enduring powers of attorney (35 per cent).

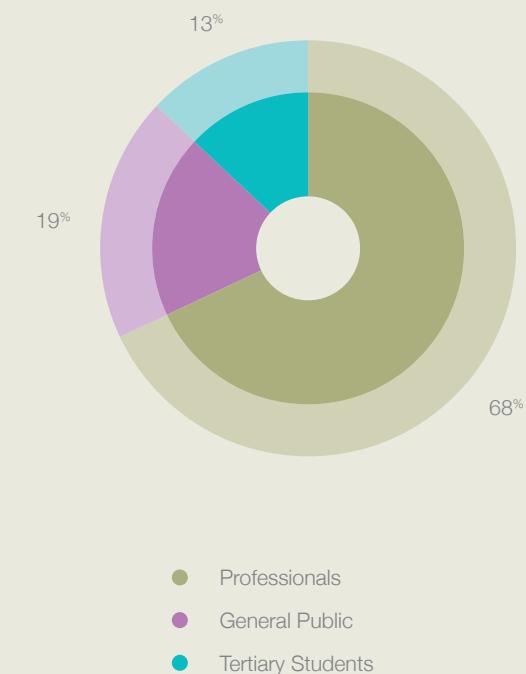


Figure 11. Audience type for education sessions, 14/15.

Evaluation of sessions

In the second half of the year, the program has begun to focus on ensuring the consistent evaluation of education sessions in order to identify the program's strengths and areas for improvement.

Audience members, or the person who has requested the session for an organisation or group, are either given an evaluation sheet at the session, or emailed an on-line survey.

In the last six months, the program evaluated 41 per cent of sessions. The results showed that 70 per cent of sessions rated five (extremely satisfied, the highest rating available); the remaining 30 per cent rated four (very satisfied).

Regular and reliable evaluation of all education sessions will be one of the key areas for program improvement next year.

Media and Communications

Introduction

OPA's Communications Unit comprises of two staff members who manage all communication needs for the office, including media enquiries and issues management, publications development and distribution, internal communications and website management. This year, due to staff leave, the unit had one staff member for the year, and received assistance from other OPA staff, contractors and a volunteer.

Publications

The unit manages more than 40 publications including fact sheets, brochures, legal guides and DVDs.

Victoria Legal Aid (VLA) manages the bulk of distribution for several OPA publications. This year, VLA distributed 45,417 copies of *Take Control*, 3059 copies of *Securing Their Future* and 27,119 fact sheets on enduring powers of attorney and guardianship.

The unit also distributed publications to individuals via phone requests and more than 360 online requests. OPA's Advice Service, Community Education and reception staff also distribute publications on request.

Annual reports

Each year, unit staff coordinate the design and production of two annual reports to Parliament, reporting on the activities of OPA and the Community Visitors Program.

A unit staff member assisted the Community Visitors Disability Services Board with its annual report for several weeks this year. This pilot project reduced the workload of OPA's volunteer Community Visitors during the lengthy process of reporting to Parliament with a shorter than usual deadline due to the upcoming state election.

Media

This year, OPA, the Public Advocate and Community Visitors were mentioned in 35 news items across radio, newspaper, online and television. Topics included: inquiries into abuse and neglect of people with disability; carer support and respite; treatment of mental health patients and elder abuse.

Many of these items were generated through the unit's promotion of OPA's programs, position statements and reports. The unit responded to 24 media enquiries on a diverse range of matters. Staff also issued 13 media releases on topics including: the findings of the Community Visitors Annual Report; Ombudsman reports on abuse in the disability sector and an investigation of a mental health service; new accommodation for people with disability living at the Colanda disability institution in Colac; and OPA's calls for more volunteers.



Home Page design of OPA's redeveloped website.



Website

Above: Some publications produced by the Communications Unit.

The unit manages the content and maintenance of OPA's public website, as well as staff and volunteer intranets.

This year, the website attracted 152,760 users, compared with 129,474 the previous year, an increase of more than 17 per cent. The most visited pages contained information on powers of attorney and associated fact sheets and forms, followed by pages with information about administration and guardianship, *Take Control* and publications orders, and medical consent information.

Building on research and development conducted last year, the unit managed the build and content writing process for OPA's new website, volunteer intranet and staff intranet.

This was a major project involving resources and research across the whole-of-the-office and which is due for completion next year.

Internal communications

The unit provided internal communications support to OPA's six units, including writing and editing, design and print, and assistance with launches and events.

The unit oversaw the design and production of OPA's Koori Inclusion Action Plan and the introduction of long-service awards at OPA.

A regular internal email communication to all staff continued to be produced by the unit.

Volunteer Programs

OPA is supported by over 900 volunteers across four volunteer programs.

OPA's volunteers represent a diverse range of communities from a variety of backgrounds and different walks-of-life but all who offer a broad range of skills, talents and experiences.

Despite their diversity, the key mission that all OPA volunteers share is that they all want to make a lasting difference in the lives of vulnerable Victorians who may be at a disadvantage due to having a disability.

OPA's volunteers provide their services in a variety of ways either by visiting and advocating for residents and/or patients in supported accommodation facilities including public mental health units, attending police interviews facilitating communication to ensure a fair and just interview, acting as substitute decision makers for vulnerable Victorians who have a decision making disability or by supporting people with a disability to make a lifestyle decision.

The table below shows the number of volunteers in the four programs during the year.

All OPA volunteers give generously and unselfishly of their time and invest in voluntary work that is often highly confronting and challenging. Despite this, 34 volunteers provided their services to more than one of OPA's volunteer programs this year.

In contrast to the challenging nature of their role, OPA's volunteers find the experience deeply rewarding and one from which they gain immense personal satisfaction:

- ▶ *“Being a volunteer, I enjoy making more new friends, learning new skills and obtaining knowledge. Most of all, when night falls, I sleep in bed knowing somewhere, someone was in safe hands because of my decision.”*
- ▶ *“I didn’t expect it to be so rewarding. I thought the role may be more demanding and I hesitated to put my hand up, but it’s not that consuming. It’s really good to know this service is here and that there are people who do this; I speak to some Community Guardians who have been volunteering for 10 years and I just think they are amazing.”*

Community Guardianship	Community Visitors	Independent Third Persons (including Corrections Independent Support Officers)	Decision Maker Supporters	Total
54	550	288	16	908

Table 12. Number of volunteers in each OPA volunteer program area, 14/15.

“The best features of the training were the level of detail provided about the program and our roles and responsibilities. I feel I have been given a high standard of training.”

Activities

Recruitment

During the year, OPA recruited an additional 162 volunteers to its volunteer programs.

Community Guardianship	Community Visitors	Independent Third Persons	Total
5	104	53	162¹

Table 13. Number of volunteers recruited to OPA's volunteer programs, 14/15.

An on-going challenge for the recruitment of volunteers is the nature of the voluntary work that OPA provides. All OPA volunteer roles are long-term in nature and quite often involve dealing with complex and challenging situations. The nature of this voluntary work can be confronting and emotionally taxing, so OPA's volunteer roles only appeal to a select group of individuals who are interested in highly challenging and stimulating volunteering opportunities.

Coupled with the challenging nature of OPA's voluntary work, OPA finds itself competing for volunteers with more than 120,000 not-for-profit community organisations in Victoria. In addition, approximately 74 per cent of people who volunteer in Victoria are engaged in volunteering with the following types of organisations: sports and recreation 38 per cent, parenting, children and youth 16 per cent and religious 20 per cent.²

Recruitment in regional areas is particularly problematic with many socio-demographic factors applicable such as people wishing to volunteer their time with locally based organisations, such as the Country Fire Authority, local schools and sporting groups combined with high unemployment, which all present barriers to regional people volunteering more broadly.

Training

OPA invests heavily in training, as well as learning and development to ensure that its volunteers are not only equipped to perform their roles but also to create an environment of continual learning and professional and personal development.

This year, 86 training sessions were held for volunteers with a total of 649 participants.

	No. of training sessions	No. of participants
Community Visitor Program	65	451
Independent Third Person Program	10	111
Corrections Independent Support Officer Program	1	8
Community Guardian Program	3	32
Cross Program Training	3	14
Decision maker Supporter Program	4	33
Total	86	649

Table 14. Number of volunteer training sessions by program area and participants, 14/15.

¹ The Supported Decision Making Project was an 18-month project, with funding only until the end of the financial year. As this volunteer program had no on-going funding and was concluding at the end of June 2015, no additional volunteers were recruited to it this year.

² Victorian Government, *Indicators of Community Strength in Victoria: Framework and Evidence*, Department of Planning and Community Development, 2011

Volunteer Consultative Committee

OPA has a Volunteer Consultative Committee (VCC) which comprises volunteers from each of the three core volunteer programs together with operational staff. Its role is to:

- contribute to the overarching volunteer policies for OPA
- contribute to a reward and recognition scheme for volunteers
- assist with the Volunteers' Conference
- contribute to engagement of and awareness of OPA volunteers
- improve performance of volunteer programs.

The VCC meets quarterly and, this year, progressed the following key initiatives:

- development of a Social Media and Volunteer Grievance Policy
- review of existing OPA Policies, e.g. Complaint handling
- survey of volunteers about a proposed volunteer conference/training day
- planning for October 2015 Volunteer Conference
- awarding seven Volunteer Recognition Awards.

► *"Thank you so much for the gift card; it was just a great surprise. I find it just so rewarding to be able to visit the Group Homes and advocate for the folk we visit to just improve their lifestyle."*

Recipient of an OPA Volunteer Award

Members of the VCC serve a two-year term. During the year, it welcomed five new committee members and farewelled three inaugural members. The turnover of membership enables the generation of new ideas and input to the committee and also enables more volunteers to take part.



► The Public Advocate thanking retiring members of the VCC Margaret and James

Community Visitors Program

Community Visitors are volunteers appointed by Victoria's Governor in Council. They derive their functions and powers under three pieces of legislation, the *Mental Health Act 2014*, the *Disability Act 2006* and the *Supported Residential Private Proprietors Act (2010)*.

Community Visitors perform an important role visiting accommodation facilities and monitoring and reporting on the services provided. They ensure that the human rights of individuals are being upheld, that they are being treated with dignity and respect and that they are not subject to abuse, neglect or exploitation.

This year, the program supported 446 appointed Community Visitors across the three sub-programs known as streams and recruited an additional 104 prospective Community Visitors.

Stream	Appointed Community Visitors	Trainees
Disability Services	283	54
Mental Health Services	82	28
Supported Residential Services	81	22
Total	446	104

Table 15. Number of Community Visitors and Trainees in each stream, 14/15.

During the year, 81 new Community Visitors were appointed by the Governor in Council for their stipulated three-year term.

In addition to the 81 appointments, 64 existing Community Visitors were reappointed for an additional three-year term.

Activities

The Community Visitors Program supports the Community Visitors in their regular visiting work, assisting senior volunteers, known as Regional Convenors, to lead and mentor their teams and facilitate interactions with service providers when problem issues are escalated. In addition, the program facilitates the preparation of the Community Visitors annual report.

Boards

The three pieces of legislation covering Community Visitors also create stream Boards made up of two elected Community Visitors. The Public Advocate chairs all the boards including the Combined Board.

The Boards are responsible for representing Community Visitors, overseeing their training, preparing publications about the role and writing an annual report to Parliament, with recommendations for sector improvement.

This year, each Board met four times and the Combined Board also met four times to consider program-wide issues. In addition, there have been two very productive meetings between the Combined Board and the Parliamentary Secretary for Families and Community Services.

Each Board also meets quarterly with their Regional Convenors to facilitate two-way communication about program issues. The Boards then advocate on behalf of the program about issues that have come to their attention at quarterly statewide meetings with the relevant departmental officers. Program staff provide all executive support to these meetings.

Working Committees

The Community Visitors Program has a number of operational committees that underpin the work that Community Visitors undertake.

Training Steering Committee

The Training Steering Committee (TSC) comprises Community Visitors who are both Board and non-Board members from each stream, and staff from the program. During the year, the TSC completed the following key pieces of work:

- Competency Assessment Rubrics for Community Visitors, Panel Secretaries who prepare the visit reports and Regional Convenors
- Mental Health Act implementation
- a Good Group Homes Workshop, now established in the training calendar.

In addition, the following training specific to Community Visitors was provided:

- dispute resolution for Regional Convenors provided by the Dispute Resolution Centre of Victoria
- Supported Residential Services Workshop provided by DHHS covering, managing challenging behaviours and an overview of SRS staff training
- Regional Convenor training on computer-based skills.

Work-in-progress the committee is considering includes:

- Personal Power – Training on abuse and neglect in facilities
- revised Update training for Community Visitors seeking reappointment.

Policy Review Sub-Committee

The Policy Review Sub-Committee (PRSC) comprises Community Visitors who are both Board and non-Board members from each stream, and staff from the program.

During the year, the PRSC completed the following key pieces of work:

- Records Management Policy and implementation plan
- Advice Service Protocol for referrals from this service.

Work-in-progress includes various submissions to a range of inquiries and investigations such as the Ombudsman's Investigation into Disability

Abuse Reporting and the Federal Senate Inquiry into abuse and neglect against people with a disability in institutional and residential settings.

The Community Visitors Program welcomed a one-off grant of \$100,000 by the former minister to implement the changes associated with new Mental Health Act. The grant did not defray all the costs involved. However, it greatly assisted the program to concentrate on Act implementation for 12 months, including developing fact sheets and running additional training for mental health Community Visitors, establishing visits to Prevention and Recovery Care (PARCs) services, and developing new protocols such with the Mental Health Complaints Commissioner.

Independent Third Person Program

Established in 1988, the ITP Program has been operating for 27 years. ITPs are trained to support alleged offenders, victims and witnesses of all ages who have a cognitive impairment at police interviews.

The program provides:

- volunteer ITPs to attend all Victorian police stations 24 hours a day, seven days a week
- up-to-date training and ongoing support for volunteers
- a free, confidential counselling and debriefing service for all volunteers
- support to people of all ages with cognitive impairments such as intellectual disability, mental illness and dementia in all types of police interviews for victims, witnesses and alleged offenders.

The critical issues for the program next year are:

- securing additional funding to ensure the program can meet capability requirements
- increasing the numbers of ITPs to meet the increasing demand for the service
- improved collaboration with Victoria Police to meet legislative requirements for Video Audio Recorded Evidence (VARE) technology interviews for victims and witnesses with a cognitive impairment

- improving training to support victims and witnesses in police interviews
- developing a new database to meet program requirements including the capacity to report on improved policing responses to contemporary issues such as family violence
- improving volunteer engagement in regions.

Statistics

During the year, 260 ITPs attended 2898 interviews across the state, primarily with people with disability as offenders. (See Table 17). This is the largest number on record for the program. Next year, the program expects to surpass 3000 interviews.

ITP Program demand

Demand for ITPs steadily increases each year with the number of interviews attended having increased 154 per cent since 2002-2003 when 1089 interviews were attended. However, funding has not kept pace with demand. Also legal and technological requirements have changed dramatically since the inception of the program, for example, the *Sex Offenders Register Act 2004* changes and the movement of victim and witness interviews from Video Audio Taped Evidence (VATE) to VARE.

The pressure on the program to meet requests is exacerbated by the increasing complexity of matters often necessitating the need for legal advice to guide the program. In addition, there are extra ITP support needs to prepare volunteers to meet these demands and, in some instances, debrief them following the interview. Limited funding hampers the ability of the program to ensure trained ITPs are available as required

The program urgently needs a new database as the current one will no longer work when upgrades to the Department of Justice and Regulation (DOJR) network, scheduled for the end of 2015, take place. The program, including the CISO component, wants to join the rest of the OPA in using the Resolve Case management system. However, early estimates placed the database cost at half the yearly ITP budget, which is already at capacity. OPA has provided initial funding to start the project, however, the quantum means that it cannot be easily accommodated.

	Alleged Offender	Victim	Witness	Total
Terrorism	1			1
Total	1			1
Drug Offences				
Drug (cultivation, manufacture, trafficking)	28	0	0	28
Drug (possession, use)	135	0	0	135
Total	163	0	0	163
Offence Against Person				
Abduction/kidnap	20	1	0	21
Assault	671	66	14	751
Homicide	14	1	5	20
Rape	112	76	22	210
Robbery	47	0	1	48
Sex (non-rape)	192	105	19	316
Total	1056	249	61	1366
Offence Against Property				
Arson	62	0	2	64
Burglary (aggravated)	51	1	0	52
Burglary (other)	138	0	2	140
Burglary (residential)	8	0	0	8
Deception	41	0	0	41
Handle stolen goods	60	0	0	60
Property Damage	345	2	0	347
Theft (other)	358	3	1	362
Theft (shop steal)	95	0	0	95
Theft from motor vehicle	62	0	0	62
Theft of motor vehicle	60	0	0	60
Total	1280	6	5	1291
Other Offences				
Behaviour in public	22	1	0	23
Go equipped to steal	13	0	0	13
Harassment	81	2	0	83
Justice procedures	80	1	1	82
Other	198	73	20	291
Regulated public order	531	3	3	537
Traffic	63	1	0	64
Transit	3	0	0	3
Weapons/explosives	119	0	0	119
Total	1110	81	24	1215
Grand Total	3610	336	90	4036

Table 16. ITP program client type by offence, 14/15.

Disability	Alleged Offenders			Victims			Witnesses			Total
	Female	Male	Other	Female	Male	Other	Female	Male	Other	
ABI	45	352	0	19	13	0	0	8	0	437
Dementia	0	10	0	0	0	0	0	0	0	10
Drug/Alcohol affected	1	8	0	0	0	0	0	0	0	9
Intellectual Disability	154	668	1	98	57	0	21	19	0	1018
Mental Illness	103	407	0	41	19	0	4	6	0	580
Other	11	82	0	17	8	0	4	3	0	125
Unknown	122	519	17	22	20	1	9	6	3	719
Total	436	2046	18	197	117	1	38	42	3	2898

Table 17. ITP interviews by disability type, client type and gender, 14/15.

Public Advocate Awards for Victoria Police

To mark the 25th Anniversary of the program in 2013, former Chief Commissioner Ken Lay, announced at the OPA volunteer conference that the Public Advocate would begin presenting annual awards to operational police stations in recognition of their use of ITPs.

In December 2014, the inaugural Public Advocate award went to Dandenong and Mildura Police stations for their support of the program to safeguard the rights of a people with a mental illness or cognitive impairment.

Dandenong Police Station received the Metropolitan Award as it has the highest number of requests for ITP attendance at police stations. Dandenong has clearly integrated the program into its daily policing requirements. The ITPs who volunteer at the station have described it as very efficient, with officers having an excellent mindset and demonstrating compassion toward people with disabilities.

Mildura Police Station received the Regional Award for outstanding support to the program, having the highest number of callouts for a regional location. It is also very clear that calling

an ITP is ingrained in the culture at the station. ITPs in Mildura wanted to specifically acknowledge the Sexual Offences and Child Abuse Investigation Team members for supporting victims of crime and encouraging the ITP to build rapport prior to the formal police interview to reduce victim fear.

The program looks forward to next year's nominations in December 2015.



The Public Advocate presents her ITP metropolitan award to Dandenong Police Station for continuing to support people with a disability.

ITP training and support

The role of the ITP is to facilitate communication. When working with an alleged offender (AO), part of the role involves making sure the AO understands and can exercise their rights (should they choose to). In victim and witness interviews, the ITP provides support and facilitates communication.

ITP training is critical to ensuring volunteers are aware of legislative requirements including Intervention Orders (IVOs), sex offender record-keeping and VAREs.

This year, the program undertook a review of VARE interviews, thanks to a university placement, which incorporated feedback from both ITPs and Victoria Police. The resulting report recommended removal of ITP Victim and Witness training from the induction program in favour of the development of a tailored session.

Next year, the program will develop a one-day VARE interview session in conjunction with Victoria Police and other volunteer programs such as the Child Witness Service, so all volunteers across Victoria can be best placed to assist vulnerable victims and witnesses in police interviews.

The program has also been working to increase volunteer training options and was grateful for the opportunity for ITPs to attend the Honorary Justice Koori Awareness Training.

A call centre is utilised to respond to police requests for an ITP so, in an effort to improve both the police and volunteer interaction with it, call centre scripts and instructions were revised. Over the past six months, this has resulted in a reduction in the number of calls required to secure a volunteer to attend interview which means reduced police wait times.

Other measures to improve ITP support included the standard ITP form being amended to include the free, confidential 24/7 debriefing number available to volunteers, regular electronic communication and the use of a universal email address. This is monitored daily by program staff, to improve response times to volunteer support requests.

CISO Program

Corrections Independent Support Officers (CISO) are experienced volunteers recruited from the ITP program.

Their role is to provide assistance and support to prisoners with a diagnosed intellectual disability during Governors' Disciplinary Hearings (GDH), at all adult prisons in Victoria.

The critical issues for the CISO program for next year are:

- working with Corrections Victoria to promote the program
- recruitment and training of CISOs in regional areas.

A CISO actively participates in the disciplinary hearings process. They must explain to the prisoner what their rights are at a GDH, be assured they understand them and are able to freely exercise them in order to participate in a disciplinary hearing, before it can commence. The CISO then facilitates communication and supports the prisoner through the hearing process.

Statistics

During the year, CISOs were requested to attend a total of 237 hearings in seven of Victoria's 13 prisons (excluding the Judy Lazarus Transition Centre). This is an increase of 15.6 per cent in requests to attend hearings. The hearings related to 323 individual charges.

Prison	No. of individual charges	No. of hearings
Ararat	23	17
Barwon	4	3
Dame Phyllis Frost	11	8
Loddon	45	36
Marngoneet Correctional Centre	3	3
Metropolitan Remand Centre	65	47
Port Phillip	172	123
Total	323	237

Table 18. Number of disciplinary hearings by number of charges where CISO was requested to attend, 14/15.

Last year, the program reported that almost a third of scheduled hearings did not proceed or proceeded in the absence of a CISO.

This year, pleasingly, only 12 hearings did not proceed for the following reasons:

- adjourned to another date
- prisoners not medically fit for GDH to proceed
- attended prisoner declined CISO support
- prisoner transferred to another prison.

The program has established a universal email system, which has resulted in a faster response time to requests for CISOs.

Prisons have also been assisting by notifying OPA of hearing dates five days in advance, rather than requesting a CISO on the day prior.

Supported Decision Making Pilot Project

In 2013, OPA launched its Supported Decision Making pilot program with the aim to train and match volunteers with socially isolated people with intellectual disability who wanted support with decision making.

Supported decision making is endorsed by the United Nations as the mechanism to help people with impaired decision making capacity exercise their legal capacity on an equal basis with others.

OPA learnt a lot about supporting people with intellectual disability with their decisions through the project and the great work of the volunteers.

In particular, it learnt that supporting decision making can be very time-intensive and the first step is to build trust and understanding before moving into problem-solving and decision making.

It was important to explore options with participants and, at first, many needed much encouragement to try new experiences. With exploration the original goal and decisions often shifted.

Despite encountering a range of barriers and issues, the volunteers found it very rewarding to see their participants grow in confidence as they tried out new experiences, discovered they had choices, learnt from any mistakes and made decisions for themselves. Volunteers proved very resourceful in using their role to introduce new ideas and activities that were inclusive, local and sustainable for their participants.

Decisions ranged from where to live, to health decisions and undergoing medical procedures, to how and where to go on a holiday, to becoming a volunteer, to being linked in with community activities.

While some decisions might appear to be small steps, such as accepting a social activity, it represented a major shift in thinking and significant improvement in the quality of life for the participant. Participants made many decisions that would not have arisen or been given effect to without the support, encouragement and oversight of the volunteers.

The project recruited 18 people with intellectual disability and has identified an area of unmet need for socially isolated people with decision making disability, and this will continue to be an area of concern for, and work by, the office.

Corporate Services

The Corporate Services Unit comprises nine staff positions providing services to OPA and the Victorian Equal Opportunity and Human Rights Commission via a shared service level agreement.

Corporate services include human resource management, financial management, information technology and communications, reception, purchasing, accounts payable, accounts receivable, motor vehicle fleet management, accommodation maintenance and records management.

The following highlights the unit's achievements during the year.

Human resources

The Nexus Performance and Development Plan (PDP) system operated effectively throughout the year. The PDP system, which applies to all Victorian Public Service staff, details goals and measures of outcomes for a position and how the employee adds value to the office.

Nexus enables the employee to record, review, assess and update progress during the year and assists in managing learning, performance and career progression. The PDP system facilitates regular discussion and feedback between manager/supervisor and staff member on job performance and progress, application of the office's values, learning and development, and career progression, all of which are critical to achieving the office's strategic objectives.

The staff induction process provided new staff with an appropriately paced induction to all functions of the office, including meetings with the Public Advocate and program managers, copies of all forms required to commence employment and ready access to information in hard copy or via the office or DOJR intranet services. There is regular review of the induction process and information content to ensure that it is informative and meets the needs of new employees.

The Management and Staff Consultative Committee which meets bi-monthly continued to work effectively within its terms of reference to address issues relating to structure, introduction of new technology, changes to existing work practices and health and safety. Health and safety was a key focus for the committee during the year, with oversight of the OPA Health and Wellbeing Program that commenced in July 2014. The program comprises a wide range of information sessions on health and wellbeing, diet and exercise presentations, access to influenza vaccinations, skin cancer checks and lunchtime yoga and yoga nidra sessions.

In addition, the committee managed a project to implement a range of new security measures and procedures designed to improve the safety of staff and visitors to Level 1, 204 Lygon Street Carlton and staff visiting clients external to the building.

All OPA staff were invited to participate in the 2015 Victorian Public Service People Matter Survey. The results of this survey will be used to further inform our human resources strategies.

The office continued to facilitate elected and management health and safety representatives, provided ergonomic assessment of workstations and trained staff in evacuation and emergency procedures. The unit continued to provide an Employee Assistance Program through Optum and allowances for First Aid Officers. Financial assistance was given to staff requiring spectacles when using screen-based equipment.

The office complied with all DOJR human resource management policies, procedures and conferrals of authority.

Information technology and communications

The office continued to provide staff with training and on-going assistance in the use of the Resolve case management system, Microsoft Office products, Lotus Notes software and the Q-Master telephone system.

During the year, 22 out-of-date Community Visitor Regional Convenor PCs were replaced, as were mobile phones and car mobile telephone kits as required. Out-dated office desk monitors also continued to be replaced.

On-going technical support was provided as well as programming services for users of the office databases to maintain or enhance system functionality, reporting and ease of data entry.

The Cornerstone Project produced specifications for a major Resolve upgrade across the Advocate Guardian, Facility Management and Advice Service programs. This project also incorporated new fields for data capture that will be utilised by the Policy and Education Unit. Programming work commenced in June 2015 and is planned to be complete by September 2015.

Specifications were also finalised for a new Independent Third Person Program database, with programming work commencing in June 2015. Finalisation of this project is planned for November 2015.

Staffing

At the end of the year, there were 85.5 staff in total. Of these, 20.5 staff were part-time and nine were in the Corporate Services Unit.

Allowing for allocation of Corporate Services staff on a 50 per cent basis and adjusting for part-time staff, there was an effective full-time equivalent of 74.07 staff.

Finance

Monthly financial statements were prepared for the office overall and for individual programs. The statements, with accompanying explanation of any variances between actual and budget expenditure and revenue provided concise information in an understandable format relating to line item expenditure, expenditure by each program and revenue.

In accordance with the Whole of Government Financial Management Compliance Framework, work continued to ensure that the office met its obligations and there was effective monitoring and review of overall performance in respect of financial management.

Detailed analysis of salary and operating costs provided data on the office's output functions and valuable information to support future submissions for new funding to address gaps between resource availability and demand for services across programs.

Careful monitoring of expenditure approval and purchasing procedures ensured compliance with DOJR policies, procedures and conferrals.

Complaints

This year, OPA received 97 complaints.

Seventy-two complaints related to the Advocate Guardian Program with the main issues being communication/consultation and accommodation.

Nineteen were informal complaints and were referred to the program for local resolution, up from 13 complaints last year.

Following the introduction of a review process in 2013, there was an increase in the number of requests for a review of a guardian's decision (from seven in 2013–2014 to eleven this year).

Three matters were resolved when the complainant was provided with a statement of reasons, one matter returned to VCAT, in six matters the decision was sustained and one matter remains open.

Ten complainants who contacted OPA with matters outside its jurisdiction were referred to other agencies for assistance.

Of the 15 remaining complaints, eight related to Volunteer Programs, five to the Policy and Education Unit, two to other programs.

There was an increase in contact with the Victorian Ombudsman with five enquiries this year compared to one last year.

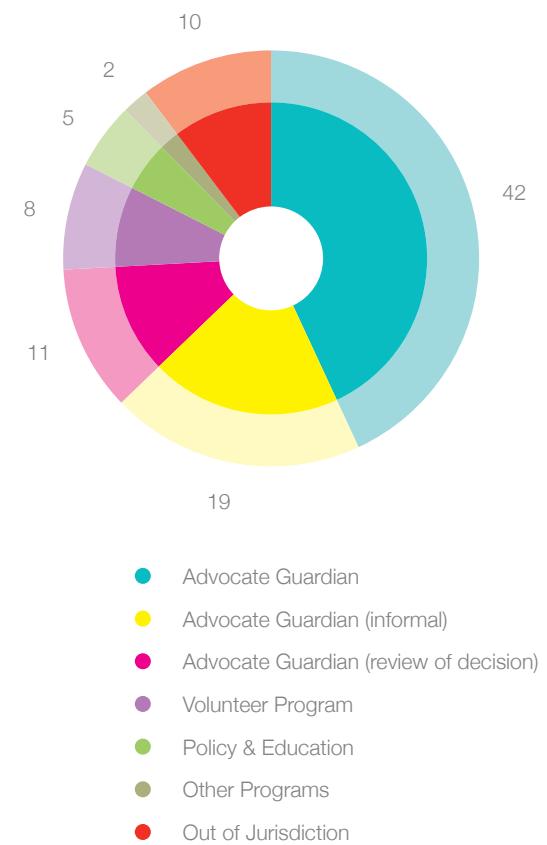


Figure 12. Breakdown of complaints received, 14/15.

Financial Performance

Sources of income

The Office of the Public Advocate had a total revenue of **\$10,001,334** from the following sources:

Department of Health and Human Services:
\$808,516 for the Community Visitors Program (CVP).

Department of Health and Human Services:
\$256,463 for the Independent Third Person Program (ITP).

Corrections Victoria: Grant of **\$15,500** to the ITP for the Corrections Independent Support Officer (CISO).

Victorian Ombudsman: **\$56,496** for investigation support.

Yajilarra Trust: Grant of **\$7,691** for research into the impact of the criminal justice system on people with acquired brain injury and to ensure that the National Disability Insurance Scheme (NDIS) addresses the needs of such people.

Federal Attorney-General's Department: **\$30,000** for a project that will standardise data collection practices on sterilisation applications and medical procedures.

Department of Health and Human Services:
\$33,600 for advocate representation for transitioning to NDIS.

OPA's Community Education Program: **\$16,883**.

Department of Justice: **\$8,776,185**.

Expenditure

The office spent **\$10,399,377** on its services as follows:

Service	Amount \$
Guardianship	\$3,407,340
Community Guardianship	\$99,272
Investigations	\$1,040,784
Advocacy	\$482,583
Short Term Advocacy and s42	\$529,635
Systemic Advocacy	\$1,088,339
Advice Service	\$832,164
Community Education	\$411,448
CVP - Mental Health	\$518,774
CVP - Disability Services	\$969,209
CVP - Residential Services	\$525,986
ITP Program	\$493,843
Total	\$10,399,377

Table 19. Total expenditure, 14/15.

During the year, OPA provided additional funding of **\$543,799** to run the Community Visitors Program and the Independent Third Person Program.

OPA Cost by Service

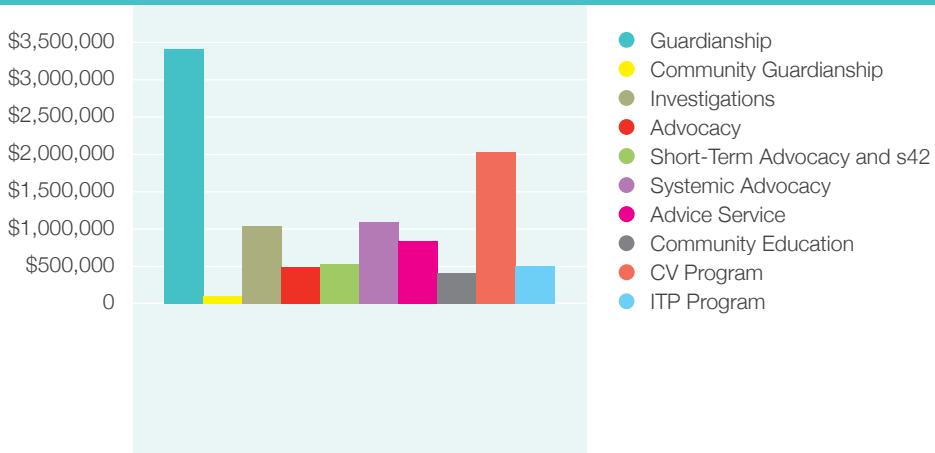
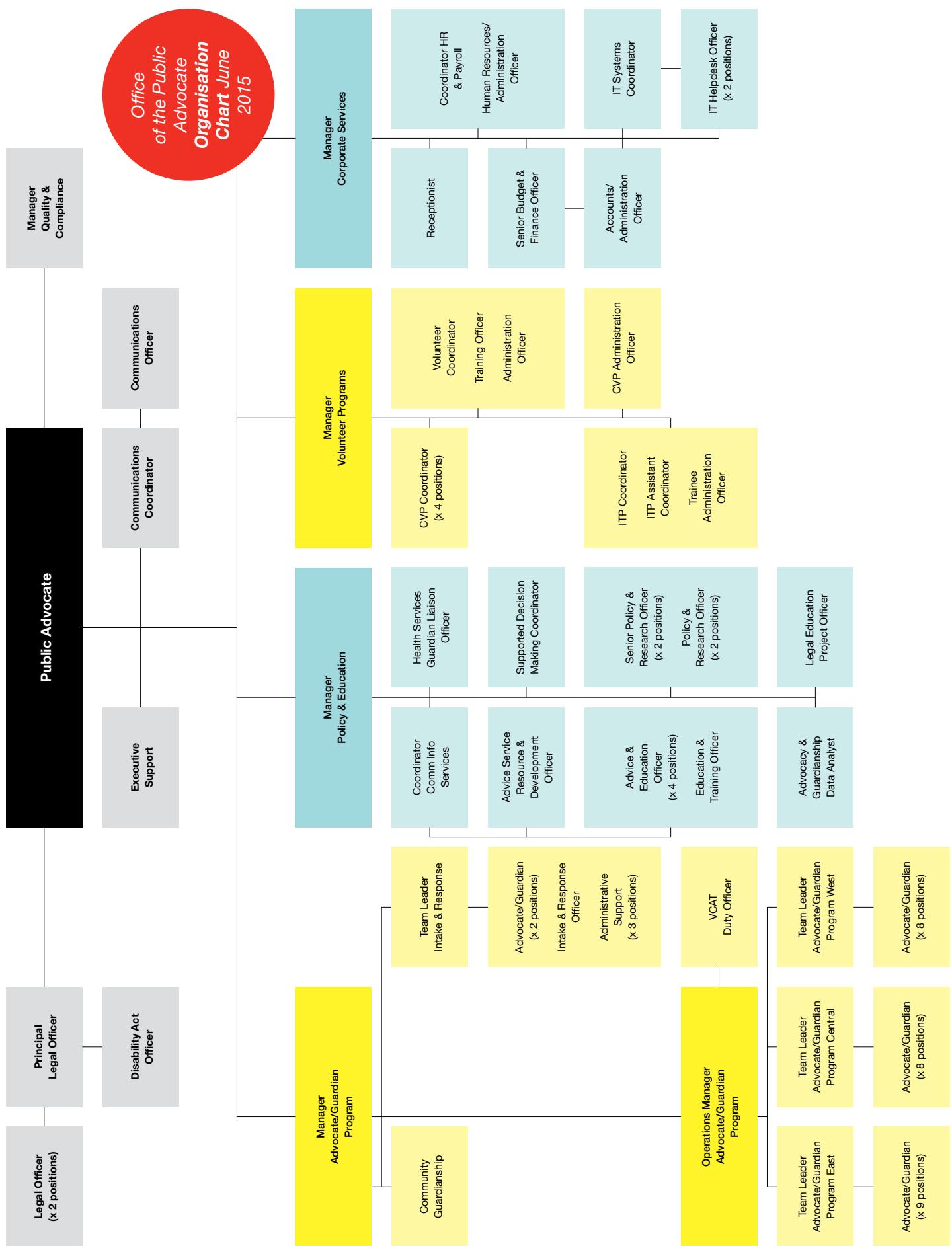


Figure 13.
Cost by service, 14/15.





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