



**Royal Commission**  
into Family Violence

**WITNESS STATEMENT OF COLLEEN GEORGETTE PEARCE**

I, Colleen Georgette Pearce, Victorian Public Advocate, of Level 1, 204 Lygon Street, Carlton, in the State of Victoria, say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

**The role of the Office of the Public Advocate**

2. I have been Victoria's Public Advocate since 2007.
3. The Office of the Public Advocate (**OPA**) is a statutory body with the powers defined under the *Guardianship and Administration Act 1986*. OPA provides advocacy, guardianship and investigation services to people with a cognitive disability including people with an intellectual disability, a mental illness or an acquired brain injury.
4. OPA coordinates the Community Guardianship Program, the Community Visitors Program and the Independent Third Person Program. OPA also plays a role in community education, the provision of advice and information and also undertakes research, policy development and systemic advocacy. OPA has a Legal Unit and a Policy and Research Unit.
5. Under the *Guardianship and Administration Act*, the Public Advocate is charged with 'the protection of persons with a disability from abuse and exploitation and the protection of their rights.'<sup>1</sup> The Public Advocate also holds specific powers of entry and inspection where abuse of people with disability in an institution is suspected.<sup>2</sup>

**Background and qualifications**

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<sup>1</sup> *Guardianship and Administration Act 1986*, s15(c)(iv).

<sup>2</sup> *Guardianship and Administration Act 1986*, s18A(1); s18A(5).

6. I have more than 30 years' experience managing community and health services in government and non-government sectors in Victoria.
7. Prior to my appointment as Victorian Public Advocate in 2007, I was the Director, Community Operations, Victims Support Agency in the Department of Justice. My prior appointments include. Director, UnitingCare Victoria and Tasmania, Executive Director, Moreland Hall, and Chief Executive Officer, North Richmond Community Health Centre
8. I am a board member of Connecting Home, an organisation established in response to the recommendations arising from the Victorian Stolen Generations Taskforce report, and of the Victorian Equal Opportunity and Human Rights Commission.
9. I was awarded a Commonwealth Centenary Medal in 2003.
10. I hold the following qualifications:
  - 10.1. Masters of Business Health Administration
  - 10.2. Graduate Diploma, Health Services Management
  - 10.3. Diploma of Education
  - 10.4. Bachelor of Arts

## Introduction

11. OPA has extensive experience in reporting on and investigating violence and abuse, stemming from the Public Advocate's statutory responsibility in this area and the role of the Community Visitors (which I discuss further below).
12. While the Public Advocate has experience of family violence in all program areas, the focus of this statement is cases from the Advocate Guardian Program and the Community Visitors Program and, to a lesser extent, on cases from the Legal Unit.
13. Australia's ratification of the United Nations Convention on the Rights of Persons with Disabilities 2006 (**Disabilities Convention**) places a positive obligation on the signatory states to ensure that mechanisms are put in place to operationalise these rights.<sup>3</sup> Some of the rights relevant to family violence as it impacts on persons with

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<sup>3</sup> Australia signed the Convention in 2007 and ratified it in 2008.

disability are Article 12, 'Equal recognition before the law'; Article 13, 'Access to justice' and; Article 16, 'Freedom from exploitation, violence and abuse'. These rights are referenced below as a means of contextualising disability and family violence.

### **Advocate Guardian Program**

14. Guardianship is one of the chief mechanisms for the protection of persons with disability under the *Guardianship and Administration Act 1986*. A guardian may be appointed for a person with a disability who is 'unable by reason of the disability to make reasonable judgments in respect of all or any of the matters relating to her or his personal circumstances'.<sup>4</sup>
15. Guardianship is one of the largest components OPA's work, with over 1519 guardianship services recorded in 2013-2014. The Advocate Guardian Program provides services in guardianship, advocacy and investigation and in the course of this work, advocate guardians encounter violence and abuse.<sup>5</sup> A high proportion of cases of violence and abuse, including family violence, have been found in file reviews undertaken in recent OPA research.
16. In 2010, an exploratory research project undertaken by OPA examined 86 cases of violence and abuse in which the represented person had been subject to violence.<sup>6</sup> The people were 66 women and 20 men who had been subjected to a range of violent and abusive acts including physical and sexual violence, emotional and psychological abuse (including seclusion and restraint), impairment related abuse, financial abuse and neglect.
17. The research found that perpetrators included the parent or a parent's partner, a sibling, another relative, a partner, a neighbour, a staff member, a co-resident or a stranger. In the 64 cases where the perpetrator was categorised as relative or partner, the actions could be categorised as family violence under the *Family Violence Protection Act 2008*.<sup>7</sup>
18. In 2011, a file review of women guardianship clients undertaken by OPA for the Voices Against Violence research found that out of 100 women, 45 had

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<sup>4</sup> *Guardianship and Administration Act 1986*, s22(1)(b).

<sup>5</sup> Office of the Public Advocate Annual Report 2013-2014.

<sup>6</sup> Dillon, J. 2010 'Violence against People with Cognitive Impairments - report from the Advocacy/Guardianship Program at the Office of the Public Advocate'. Office of the Public Advocate.

<sup>7</sup> Ibid.

experienced or were experiencing violence that was either physical or emotional in nature. The report indicates that intimate partners were the leading category of perpetrators. Other perpetrators included children, acquaintances and parents. Most of the perpetrators were reported to be men.<sup>8</sup>

19. Six cases of impairment related abuse were found in Voices against Violence including the deliberate overfeeding of a woman with Prader-Willi syndrome leading to a life-threatening increase in weight, taking a women's hearing aids, denial of money for medication, engagement of the person in an inappropriate and dangerous care regime and denial of medical support.<sup>9</sup>
20. OPA is currently undertaking research into the incidence of (and circumstances surrounding) experiences of violence, abuse and neglect of people referred to us by the Victorian Civil and Administrative Tribunal (VCAT) for investigations or guardianship. The focus of this work, the anticipated completion data of which is 2016, will be on elder abuse. Data to date shows that 12% of guardianship matters in 2013-2014 identified family violence as an issue for the Represented Person (85 out of 722 matters).<sup>10</sup>

### Legal Unit

21. OPA has a Legal Unit, consisting of three legal officers and a Disability Act Officer. The unit provides advice, education and casework services to all OPA programs and education to the community. This may involve supporting advocate guardians in cases concerning the *Family Violence Protection Act 2008*.
22. The Disability Act Officer provides advice to OPA staff and protects the rights of people under the *Disability Act 2006 (Disability Act)*. Disability service providers must notify the Public Advocate of details of a temporary relocation (s74(4)) or a notice to vacate a residential service (s76(7)).

### Community Visitors Program

23. In Victoria, volunteer Community Visitors provide independent monitoring under the *Mental Health Act 2014*, the *Disability Act* and the *Supported Residential Services*

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<sup>8</sup>McGuire, M. 2013 'Voices against Violence – paper four, a review of the Public Advocate's records on violence against women with disabilities'. Office of the Public Advocate in partnership with Women with Disabilities Victoria and the Domestic Violence Resource Centre Victoria. The report outlines the findings from a review of 100 advocate guardian files.

<sup>9</sup> Ibid.

<sup>10</sup> Bedson L 2015 Elder Abuse Project – preliminary data (unpublished).

*(Private Proprietors) Act 2010*. Community Visitors in Victoria visit people in 24-hour mental health settings, disability residential services accommodation and supported residential services.

24. While the Community Visitors Program was established in 1986, since 2009-2010, Community Visitors have been systematically monitoring and reporting incidents relating to abuse, neglect and assault in disability residential services, supported residential services and mental health services. A total of 880 incidents have been reported since that time. As an illustration, in a recent Community Visitors' Annual Report, Community Visitors reported 'troubling cases of assault by staff, serious and unexplained injuries and people living in fear of violence'.<sup>11</sup>
25. Since 2010, I have required Community Visitors to notify me of matters concerning sexual assault or serious abuse and unexplained injury in the settings they visit.<sup>12</sup> Notifications relate to people living in 24-hour mental health facilities, disability residential services and supported. However, the bulk of notifications have been in disability residential services (87 out of 118 notifications or 67%).<sup>13</sup> I receive many shocking reports of abuse and assault of people in group home settings, many of which continue for years, leaving people at serious risk of abuse including physical violence, sexual assault and bullying.
26. OPA recently undertook an analysis of the 87 notifications relating to disability residential services made between 1 July 2010 to 1 January 2015 for the Victorian Ombudsman's investigation into disability abuse reporting. The analysis found that the top three notifications categories were for resident to resident violence; staff to resident violence; and unexplained injuries.

## **Family violence and disability**

### *Settings*

27. People with disability experience violence in a range of settings including institutional and service settings.

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<sup>11</sup> Community Visitors Annual Report 2011-2012 p 4.

<sup>12</sup> Previously, the Public Advocate was only informed when a concern could not be managed at the program level and needed to be escalated to a higher authority by the Public Advocate.

<sup>13</sup> Disability residential services accommodation in this submission means 'group homes' run by Disability Services or not-for-profit Community Service Organisations and the remaining institutional residential services run by Disability Services e.g. Plenty, Sandhurst and Colanda.

28. Large numbers of women with disabilities still reside in and receive support in a range of 'institutional' and/or 'service' settings, such as group homes, supported residential facilities, licensed and unlicensed boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Women and girls with disabilities who experience these types of settings are at particular and significant risk of violence, abuse, neglect and exploitation.<sup>14</sup>
29. Many group homes are suburban houses with four or five residents living in them who are supported by paid staff. In many ways, after cohabiting for some time, residents become in some ways akin to family members. The residents of group homes are sharing their home with other residents, and depending on the level of their social inclusion, residents will tend to spend significant amounts of time with co-residents. Co-residents in group homes share a degree of power deficit, in often being reliant on paid staff for support with daily living and social inclusion activities. While co-residents in group homes may become friends with one another, their lack of choice about who lives in their homes does make the relationships between group home co-residents closer in some ways to family members than anything else (an analogy can be drawn here with co-resident siblings, who likewise do not choose their siblings). Having made that point, OPA would like greater care to be had in ascertaining the compatibility of co-residents in group homes, and OPA would also like to see co-residents having a greater say than currently they are given to determine who lives with them.
30. While it is difficult to know the extent to which many residents in group homes might themselves consider their co-residents as being like family members, some residents certainly do think of their co-residents in this way. The 'person centred plans' that are completed with, or on behalf of, group home residents often describe other residents in the house in terms that are different to how friends or indeed strangers might be described; OPA would argue that these descriptions often point to family-like relationships. Departmental guidance encourages staff to actively promote residents' 'participation in household and community activities' and their 'relationships with other people'; and the whole philosophy behind the development

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<sup>14</sup> Frohmader, C., Dowse, L. and Didi, A. 2015 'Preventing Violence against Women and Girls with Disabilities - Integrating a Human Rights Perspective.' Women with Disabilities Australia and the University of New South Wales.

of group 'homes', in contrast to residential institutions, has been to provide home-like environments. See further Christine Bigby and Emma Bould 'Guide to visiting and good group homes' (OPA 2014).

31. Many types of violence in institutional settings seen by Community Visitors potentially meet the definition of family violence under the *Family Violence Protection Act 2008*. That is, any 'behaviour by a person towards a family member of that person if that behaviour is physically or sexually abusive; or emotionally or psychologically abusive; or economically abusive; or threatening or; coercive; or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person...'<sup>15</sup>
32. Under the *Family Violence Protection Act 2008*, a family member includes any person whom the relevant person regards or regarded as being like a family member, including consideration of whether the relevant person and the other person live together or relate together in a home environment, and paid and unpaid carers.<sup>16</sup>

#### *Types of abuse*

33. The Australian Law Reform Commission in its review of family violence and Commonwealth laws illustrated the ways people with disability can experience family violence. This can include: sexual or physical assault, stealing and financial exploitation including misappropriation of social security payments and other benefits and concessions, neglect and deprivation of things such as shelter, nutrition and essential medical treatment, specific types of abuse related to disability including withholding equipment, food and medication and forced sterilisation and abortion.<sup>17</sup> OPA sees all these types of abuse.<sup>18</sup>

#### *Gender*

34. Violence against people with disability, in particular women, has been argued by advocates to be qualitatively different to the violence experienced by people without

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<sup>15</sup> Family Violence Protection Act, s5(i)(a).

<sup>16</sup> Family Violence Protection Act s8(3).

<sup>17</sup> Australian Law Reform Commission 2011 Family Violence and Commonwealth Laws, Community Information Sheet. Australian Government, p1.

<sup>18</sup> See McGuire 2013 and Dillon 2010.

disability in terms of its unique forms and consequences.<sup>19</sup> Evidence supports the reality that family violence disproportionately affects women and that men are overwhelmingly the perpetrators.<sup>20</sup> While there are gaps in research to date, evidence is emerging on the incidence and prevalence of violence against women with disability.

35. While women with disability experience many of the same forms of violence that other women experience, what they experience may be particular to their situation of 'disadvantage, cultural devaluation and increased dependency on others.'<sup>21</sup> One study suggests that women with disability are 40% more likely to be victims of domestic violence than women without disability.<sup>22</sup> Recent data from OPA's Advocate Guardian Program shows that of 85 matters concerning family violence experienced by represented persons in 2013-2014, 65 related to women and 20 to men.<sup>23</sup>
36. OPA supports the statement by Women with Disabilities Victoria that violence against women with disabilities must be understood in the context of the intersections between gender and disability, power and marginalisation.<sup>24</sup> 'Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full participation in society on an equal basis with others.'<sup>25</sup>
37. While women with disability are subject to the double disadvantage of gender- based discrimination and disability discrimination, men with disability are also subject to disability discrimination and are at a greater risk of violence than men without disability. However, little is known about violence against men with disability. One study suggests that men with disability are at heightened risk of lifetime and current sexual victimisation as compared to men without disability, although they are at lesser risk than women with disability.<sup>26</sup>

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<sup>19</sup> Frohmader et al 2015; Women with Disabilities Victoria 2015 'Violence against women with disabilities – position statement'.

<sup>20</sup> This fact was noted by the Royal Commission into Family Violence 2015 'Issues Paper'p3. Victoria.

<sup>21</sup> Swift 2013 cited by Fromhader 2015 p6.

<sup>22</sup> Brownridge 2006 cited by Frohmader et al 2015 p7.

<sup>23</sup> Bedson 2015.

<sup>24</sup> Women with disabilities Victoria 2015 Position Statement violence against women with disabilities

<sup>25</sup> The Convention 2006, preamble (e).

<sup>26</sup> Monika M., Mouradian V., Diamond M. 2011 *Sexual Violence Victimization Against Men with Disabilities*. American Journal of Preventive Medicine. Nov, Vol. 41: 494-497.



38. In OPA's experience, men in group home environments may be subject to physical and verbal abuse from staff and other residents. For example, in a recent case, Community Visitors notified the Public Advocate about a man with a disability being physically assaulted by a male staff member.

### **Service system issues**

#### *Normalisation of violence*

39. The tolerance of violence against people with disabilities is high and often one of the greatest difficulties people with disabilities face is the reluctance of others to recognise and believe that abuse has taken place.<sup>27</sup> One issue guardians see is a high tolerance of violence towards people with disability in residential settings by accommodation service providers and responsible authorities. If this violence was to occur in a domestic environment, it would be termed 'family violence'.

#### *Workforce and culture issues*

40. OPA's analysis of notifications to the Public Advocate by Community Visitors revealed that violence between residents and violence perpetrated by staff towards residents in disability residential services are the top two types of notifications to the Public Advocate. Both of these categories potentially meet the definition of family violence. The analysis of case studies evidenced a range of workforce and cultural issues that allow violence to occur in the first place and allow it to be perpetuated once it has occurred.
41. Violence perpetrated by staff towards residents is reported to OPA and Community Visitors in many forms ranging from bullying and disrespectful behaviour to rough handling, physical and sexual violence. In some services there is an implicit acceptance of behaviours that cause harm and a reluctance to name this as violence. This type of culture may also include the bullying of staff, which is intended to discourage reporting.
42. Poorly trained staff and staffing shortages compound the issue. Poorly trained staff are unlikely to have a sophisticated understanding of disability and complex behaviours and may be unable to manage people with complex needs or to

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<sup>27</sup> Victorian Law Reform Commission 2006 Review of Family Violence Laws, p40.

recognise and report actions that put residents at risk.<sup>28</sup> Strong leadership and continuous professional development, supervision and support on the ground by more highly trained and experienced staff is needed to support these staff to better understand the people they are working with and to learn appropriate communication, support and behavioural management strategies.

43. Staffing shortages often result in minimally trained, casual and inexperienced staff working night shifts unsupervised with vulnerable residents. This lack of supervision and monitoring can enable a staff member to perpetrate acts of violence or abuse because their actions are unseen. The vulnerability of non-verbal female residents receiving care from casual male staff, who may be working unsupervised and unmonitored, places female residents at risk.

#### *Reporting and investigation*

44. Accurate, open and transparent incident reporting is integral to eliminating violence and abuse against residents in disability residential settings. One Community Visitor writes, 'to understand any major issues, the incident report forms are read carefully. These documents are vital to any clues of abuse, mistreatment or neglect by anyone in a resident's life or systemic failures.'<sup>29</sup>
45. The role of leadership in responding to incidents, reviewing incidents, undertaking risk management and analysing incident reporting data is critical. Service managers are responsible for ensuring proper staff training, establishing a culture where it is safe and where reporting of incidents is expected.
46. Community Visitors consistently report failures by services to report or to correctly categorise incidents and to provide Community Visitors with access to reports. In one service, Community Visitors reported eight category two incidents were downgraded by a manager. In another area, Community Visitors reported that seven out of eight reports were downgraded.

#### *Broader service system issues*

47. A study into the effectiveness of guardianship for women with cognitive impairments experiencing abuse found that 'the extent to which achieving positive outcomes (for

<sup>28</sup> Some personal care workers in disability residential settings require no minimum level of training (DDS01). Certificate IV level training should be the minimum for all staff.

<sup>29</sup> Sherlock, Y. 2015 'Draft submission to the Ombudsman from the Office of the Public Advocate', unpublished report p3.

the women) was possible was largely determined by the service system's ability or willingness to offer support'.<sup>30</sup>

48. Despite research recommendations and existing policies, 'to date, there is limited evidence of a consistent practice of collaboration between the specialist services who may support people with cognitive impairments experiencing violence, such as disability, mental health, aged care, family violence and sexual assault services'.<sup>31</sup>
49. Inconsistencies in the effectiveness of protection via intervention orders and police and justice system involvement show that there is a need for alternative and effective modes of protection for victims of violence. This included coordinated responses by police, family violence services, accommodation, case management and advocacy services.

#### *The importance of independent monitoring*

50. In Victoria, there are a number of pieces of legislation in place that outline protective mechanisms for people with disability living in the community and in residential settings. The Office of the Public Advocate has an independent monitoring and/or advocacy role in relation to four of those Acts, the *Guardianship and Administration Act 1986*, the *Mental Health Act 2014*, the *Disability Act* and the *Residential Services (Private Proprietors) Act 2010*.
51. OPA is concerned about whether the scope of accommodation settings able to be visited by Community Visitors will be broad enough under the NDIS where it is expected that a range of private housing options will be developed for residents who may have previously lived in residential facilities. A mechanism needs to be put in place to ensure residents in these environments have protections including visits by Community Visitors.<sup>32</sup>
52. The role of the Public Advocate under the *Guardianship and Administration Act 1986* is equally important. Under section 16(1)(h), the Public Advocate may be asked to 'investigate any complaint or allegation that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship'. However, OPA believes that the scope of the Public Advocate's role is too narrow and that

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<sup>30</sup> Dillon, 2010.

<sup>31</sup> Dillon 2010, p10.

<sup>32</sup> See discussion of this issue in Chesterman, J 'Modernising Adult Protection in an Age of Choice', *Australian Journal of Public Administration*, vol. 37, no. 4, pp 517-524. December 2014.

there is an investigatory gap in Victoria when the well-being of adults of disability is at risk.

53. In his 2013 Churchill Fellowship report on responding to violence of at-risk adults, OPA's John Chesterman echoes the proposal made by the Victorian Law Reform Commission in its review of the Victorian Guardianship and Administration Act, calling for an 'authority to be empowered to conduct investigations into the abuse, neglect or exploitation of people with impaired decision-making ability'.<sup>33</sup> Chesterman's proposal is for the guardian of last resort to have this broad power of investigation.

## **Legislative issues**

### **Guardianship and the Family Violence Protection Act**

#### *IVO supports 'access to persons' role of guardian*

54. Guardians can be appointed for 'access to the represented person' in cases where a person with a cognitive impairment or mental illness needs protection from exploitation by a perpetrator who may intentionally or unintentionally be harming them or putting them at risk. OPA's Voices against Violence research found that out of 100 files reviewed, 25 of the women had guardianship orders relating to 'access to the represented person' and a strong correlation was found between guardianship orders and the experience of violence.

#### *Guardian asks police to take out IVO*

55. In exercising their authority under the *Guardianship and Administration Act 1986*, the guardian must act in the 'best interests' of the represented person (s28(1)), taking into account as far as possible the wishes of the represented person (s28(2)(e)).

#### *Family violence in group home settings*

56. The lack of recognition of violence perpetrated against women with disability in institutional and group home settings means that violence against women with disability 'remains outside the current legislative and policy frameworks and responses to addressing violence against women in Australia.'<sup>34</sup> Men in disability

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<sup>33</sup> Chesterman 2014, p522. See also, Chesterman, J. 2012 'Submission to the Victorian Law Reform Commission's review of the *Guardianship and Administration Act 1986*' and Victorian Law Reform Commission 2012, 'Guardianship final report', Melbourne.

<sup>34</sup> Frohmader et al 2015 p6.

residential settings in OPA's experience are also subjected to violence and existing response frameworks are also inadequate.

57. Two pieces of legislation in Victoria aim to protect the safety of people who have experienced violence from another person who lives in the same house. Protection is available through either the *Family Violence Protection Act* or the *Personal Safety Intervention Orders Act*. Both acts allow magistrates to make intervention orders with the same conditions. This means the two acts offer the same protections, including exclusion of the perpetrator (the respondent) from the home.<sup>35</sup>
58. The *Personal Safety Intervention Orders Act* was 'drafted to provide greater consistency with the (earlier) *Family Violence Protection Act* in respect of terminology and procedure.'<sup>36</sup> 'Family members' are covered by the *Family Violence Protection Act*. If the parties are not 'family members', then protection can be sought through the *Personal Safety Intervention Orders Act*.
59. Investigation about the use of intervention orders by my office points to personal safety intervention orders used routinely rather than family violence intervention orders in group home settings. This is simply because the former are more easily obtained (a person's immediate safety is not jeopardised by the need to make the argument that the relevant parties are in family-like situations). On one recent occasion when an Advocate Guardian advocated for a family violence intervention order to be sought, it was a personal safety intervention order that was sought by the lawyer, for this reason. OPA would prefer to see family violence intervention orders able readily to utilised in group home settings in order for such situations to be identified as instances of family violence (which then would have implications for future service provision, staffing arrangements and so on).

#### *Personal Safety Intervention Orders Act vs Family Violence Protection Act*

60. While both the *Family Violence Protection Act* and the *Personal Safety Interventions Orders Act* offer the same protections, the Victoria Police only have a code of practice in relation to investigation of family violence.

<sup>35</sup> Family Violence Protection Act s81 and Personal Safety Intervention Orders Act s67.

<sup>36</sup> Judicial College of Victoria 2011, *Brief Overview of the Personal Safety Intervention Orders Act 2010*, 1 <http://www.judicialcollege.vic.edu.au/sites/default/files/Brief%20Overview%20PSIO%20-%20Final.pdf>. The Judicial College of Victoria provides education for judges, magistrates and VCAT members. We keep judicial officers abreast of developments in the law and social issues, and help them build and maintain the skills they need to perform their roles with rigour.

61. The Code of Practice for the Investigation of Family Violence (the police code of practice) sets out 'compulsory police action' in relation to reports of family violence:
62. Police will respond to and take action on any family violence incident reported to them, regardless of who made the report and how it was made. The action taken is based on risk assessment and risk management, regardless of whether the affected family member makes a verbal complaint or written statement.<sup>37</sup>
63. There is no similar police code of practice for personal safety intervention order matters. As such, it is less clear when Victoria Police will apply for an intervention order on behalf of a person under the *Personal Safety Intervention Orders Act* and there is likely to be a less consistent approach by police.
64. The Police Code of Practice currently doesn't discuss co-residents in a group home environment as possible 'family members' so it is unlikely that Victoria Police will apply for a family violence intervention order on behalf of someone in a group home environment where the alleged perpetrator is a co-resident. The Code does mention that a 'paid or unpaid carer may, on a case by case basis, be regarded as being like a family member.'<sup>38</sup>

### **Justice system issues**

65. There is widespread support for the view that people with disability who need communication supports or who have complex needs are not having their rights protected and are not being treated equally in the criminal justice system.<sup>39</sup>
66. A recent report by the Victorian Equal Opportunity and Human Rights Commission reports that people with disabilities are not gaining equal access to justice. While access to justice and safety are basic human rights, people with disabilities are 'routinely denied these because police and other parts of our criminal justice system are ill-equipped to meet their needs'.<sup>40</sup>

### **Victoria Police response to victims**

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<sup>37</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence*, Edition 3, v2 2014, p13. [http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media\\_ID=464](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=464).

<sup>38</sup> Ibid. p13.

<sup>39</sup> Australian Human Rights Commission 2013 'Access to justice in the criminal justice system for people with disability - issues paper'. [www.humanrights.gov.au](http://www.humanrights.gov.au).

<sup>40</sup> Victorian Equal Opportunity and Human Rights Commission 2014 'Beyond Doubt - the experiences of people with disabilities reporting crime'.

67. The Code of Practice for the Investigation of Family Violence includes a section titled, 'People with disabilities' which states that:
- 'Even if the capacity of a person to participate in police and court processes appears limited, neither the deterrent effect of police intervention, nor the victim's safety, should ever be underestimated or compromised.'*<sup>41</sup>
68. In reality, people with disability experiencing family violence in institutional or group home settings can have difficulty getting a police response.
69. 'Police may not investigate criminal allegations made by a person with disability who lives in a residential setting. The police may consider that the person's issues should be dealt with by staff within the residential setting or by an independent investigator. This can occur even when the allegation is against staff within the residential setting. Many service providers do not see what has occurred as a crime but a policy issue.'<sup>42</sup>

### **Independent Third Person**

70. The Independent Third Person program is an OPA volunteer program where volunteers are trained to support people with a cognitive disability or mental illness when they are being interviewed by police as a victim, witness or alleged offender.
71. The Victorian Police Code of Practice for the Investigation of Family Violence includes a 'People with disabilities' section states that:
- 'Investigating cases involving a person with a disability may take extra time. To ensure they meet the victim's needs, police should engage the services of a support person or independent third person as soon as possible. Where possible use a trained Independent Third Person or Guardian / Advocate from the Office of the Public Advocate. Allow people with a disability to communicate in their preferred way; for example, using AUSLAN, Braille, pictograms or by using a communication assistant.'*
72. There is widespread anecdotal evidence that police may not be using an Independent Third Person as stipulated in the Code of Practice. A review of

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid. p7.

Independent Third Person data shows a great disparity in the use of Independent Third Person by police across the state.

73. OPA has consistently argued that the right of people with cognitive disability to use an independent person in police interviews should be legislatively articulated.

### **Court processes**

74. Application for an intervention order under the *Family Violence Protection Act* and the *Personal Safety Intervention Orders Act* are both made through the Magistrates' Court. The process can be daunting and the venue can be intimidating for applicants. The victim needs to be proactive for their safety if the police have not taken action to protect them and, the victim does not have a guardian.
75. It is generally more difficult for an applicant under the *Personal Safety Intervention Orders Act* to obtain legal assistance because, while most courts have both a family violence duty lawyer and a Legal Aid lawyer for family violence matters, few courts have more than a Legal Aid duty lawyer for personal safety intervention order matters. The Legal Aid duty lawyer will only assist in limited matters. Victoria Legal Aid guidelines state:
76. 'People seeking or responding to applications for a Personal Safety Intervention Order (PSIO) will only receive representation in court by a duty lawyer or under a grant of legal assistance if they are children referred by the Children's Court, people genuinely at risk of homelessness or an applicant in matters involving obsessed stranger stalking.'<sup>43</sup>
77. Under either Act, if the police are the applicant they have carriage of the matter. In contrast, if an individual applies and the respondent contests the intervention order application, there will be a hearing. It is increasingly difficult to obtain a grant of legal aid for a contested personal safety intervention order hearing. If the person does not qualify for legal aid they will need to pay for a private lawyer or represent themselves.

### **People with cognitive impairment as perpetrators**

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<sup>43</sup> Victoria Legal Aid 2013 'New Personal Safety Intervention Order guidelines and procedures' <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-psio-detailed-fact-sheet.doc>



78. Through OPA's guardianship work and its work with the Disability Act, the Legal Unit comes into contact with situations where residents with a cognitive impairment receive temporary relocation notices and notices to vacate because they have been issued with intervention orders under the *Personal Safety Intervention Orders Act*. Both Acts enable conditions to be made in orders stating that the person not be permitted within a certain distance of the home.
79. OPA is concerned that in some cases it is unclear whether the perpetrator has the capacity to understand the requirements of the intervention order. OPA guardians are involved in cases where recourse to the criminal justice system is relied on in isolation from the provision of appropriate services and support.

### **Recommendations**

80. The OPA believes violence against people with disabilities warrants high level consideration and should be given greater prominence. Research undertaken in Australia and internationally provides evidence that the incidence and prevalence of violence against people with disability is far higher than in the general population.
81. OPA would also like to see a stronger emphasis on Australia's obligations under the Convention on the Rights of Persons with Disabilities and due consideration given to the legislative mechanisms, policy and service responses in place in Victoria to operationalise the rights of people with disability who are experiencing family violence.
82. The OPA proposes the following recommendations for the Commission's consideration:
- 82.1. The Family Violence Royal Commission should use the Convention on the Rights of Persons with Disabilities 2006 to guide it in reviewing the policy and service mechanisms that apply to people with disability affected by family violence.
- 82.2. The Department of Health and Human Services should formally recognise family violence that is perpetrated in disability residential settings and develop applicable needs assessment tools and a compulsory code of practice for responding to family violence.
- 82.3. The Department of Health and Human Services should provide professional development to staff for managing family violence in disability residential settings.

- 82.4. The Department of Health and Human Services should adopt OPA's Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA).
- 82.5. The Department of Health and Human Services should mandate that all disability residential services staff are trained to a minimum Certificate IV standard.
- 82.6. The Department of Health and Human Services should provide capital funding to family violence services for the development of accommodation and support services that meets the needs of people with disability affected by family violence.
- 82.7. The Family Violence Royal Commission should use the Convention on the Rights of Persons with Disabilities 2006 to guide it in reviewing the legislative mechanisms in place in Victoria that apply to people with disability affected by family violence.
- 82.8. The Family Violence Royal Commission should give consideration to the definition of 'family member' under the *Family Violence Protection Act 2008* and the adequacy of this protection for people with disability experiencing violence in institutional and service settings.
- 82.9. The Victorian Government should introduce amendments to the *Guardianship and Administration Act 1986* to give the Public Advocate broader power to investigate cases of violence, abuse and neglect as recommended by the Victorian Law Reform Commission Guardianship Final Report 2012 (recommendations 328 and 329).
- 82.10. The Victorian Government should move to amend *the Family Violence Protection Act 2008* so it is clear how people in disability residential settings are regarded as being in family-like relationships.
- 82.11. Victoria Police should amend the Police Code of Practice for the Investigation of Family Violence to include guidelines for recognising and responding to family violence in disability residential settings.
- 82.12. Victoria Police should amend the Victoria Police Manual to require police to have an Independent Third Person present when interviewing a person with a cognitive impairment or mental ill health.
- 82.13. The Victorian Government should establish a specialist family violence disability service with disability liaison officers, to provide support to people with disability in the Magistrates' Court. This should include support workers for intervention order applicants with disability.

- 82.14. The Victorian Government should as a matter of urgency fund the provision of emergency accommodation with intensive support and behaviour support for perpetrators of family violence who are evicted from disability residential settings.
- 82.15. The Victorian Government should introduce legislative reform to require police to have an Independent Third Person present when interviewing a person with a cognitive impairment or mental ill health.
- 82.16. The Victorian Government should enable witnesses with disabilities to be provided with additional support during court appearances including when giving evidence.
- 82.17. The Victorian Government should fund intermediaries to encourage and facilitate complete, accurate and coherent communication with vulnerable defendants or witnesses in the criminal justice system.
- 82.18. Victoria Police and the Victorian Government should establish a special taskforce to establish protocols for responding to family violence in disability residential settings.

*Colleen Pearce*

**Colleen Georgette Pearce**

Dated: 10 August, 2015