

# Office of the Public Advocate - Overview and key functions



Office of the  
Public Advocate

# Acknowledgement of Country



We acknowledge Victoria's Aboriginal communities and their rich culture. We pay our respects to Elders, past, present and emerging.

We acknowledge their sovereignty was never ceded.



# The Public Advocate



- ❖ Independent statutory office under the *Guardianship and Administration Act 1986 / 2019* (Vic)

## Key functions

- ❖ **Promote the human rights** of persons with a **disability** and the development of the ability of such persons to act independently
  - ❖ *neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability, dementia*
- ❖ Protect persons with a disability from **abuse, neglect and exploitation**



# Snapshot of OPA services 2021 – 2022



<b>Advice Service</b>	<b>10,133</b> instances of advice to callers
<b>Community Education</b>	<b>180</b> presentations
<b>Advocacy</b>	<b>297</b> advocacy matters
<b>Investigations</b>	<b>457</b> Investigations
<b>Guardianship</b>	<b>972</b> new appointments
<b>Medical Decisions</b>	<b>417</b> medical decisions made
<b>Research and systemic advocacy</b>	



# OPA volunteers 2021 - 2022



## Community Visitors Program

- **334** volunteers conducted **3411** visits

## Independent Third Person Program

- **155** Volunteers attended **3969** police interviews

## Corrections Independent Support Officer Program

- Volunteers attended **49** hearings



# Advice Service



- ❖ Initial point of contact with OPA for many people
- ❖ Mostly from family members and health and community service providers
- ❖ Most calls relate to enduring powers of attorney, guardianship and administration
- ❖ Separate advice line for health professionals
- ❖ Requests for Community Visitors and requests for advocacy
- ❖ Education requests from public & professionals



# Investigations



- ❖ May **investigate** any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship
- ❖ **Investigate** any matter **referred by VCAT** in a proceeding under the *Guardianship and Administration Act*, *Powers of Attorney Act* or *Medical Treatment Planning and Decisions Act*
  - ❖ Decision-making capacity
  - ❖ Need for guardianship
  - ❖ Use of powers of attorney / compliance with duties
  - ❖ Conflict, abuse and exploitation
- ❖ May **require provision of information** from a person, government department, public authority or service provider for the purposes of investigation
- ❖ May **enter and inspect** a wide range of premises



# Safeguarding and advocacy



- ❖ Broad power to advocate for the **human rights and interests** of individuals with disability
- ❖ Various laws require the Public Advocate to be notified about certain things, and provide some additional powers, so she can advocate on behalf of people with disability when their rights are restricted or at risk:
  - ❖ **Residential rights** in specialist disability accommodation and group homes
  - ❖ **Restrictive practices** against people with disability
  - ❖ **Compulsory treatment** of people with intellectual disability
  - ❖ ***Severe Substance Dependence Treatment Act*** matters







- ❖ The Magistrates' Court can make a **detention and treatment order** for a person with severe substance dependence
- ❖ The Public Advocate must be notified within 24 hours of someone being admitted to a treatment facility under a DTO
- ❖ The Public Advocate must make arrangements to **visit** the person as soon as practicable
- ❖ The role of the Public Advocate is—
  - ❖ to **make representations** on behalf of, or act for, the person
  - ❖ to provide **advice** to the person as to his or her rights and entitlements under this Act
  - ❖ where required, to **assist** the person in—
    - ❖ arranging legal representation
    - ❖ obtaining a second opinion
    - ❖ applying for the revocation of the order



# Medical treatment decisions



- ❖ Under s 63 of the *Medical Treatment Planning and Decisions Act 2016*, health practitioners must seek consent from the Public Advocate before administering medical treatment if:
  - ❖ The person does not have **decision-making capacity**
  - ❖ There is no relevant **advance care directive**
  - ❖ They do not have a **medical treatment decision-maker**
  - ❖ It is **significant treatment** that is **not emergency** treatment
- ❖ Submit an online form to OPA – [section 63 request form](#)



# Guardianship & Administration Act



- ❖ Commenced operation 1 March 2020
- ❖ Primary object is to **protect and promote the human rights and dignity of persons with disability** by
  - ❖ having regard to the **Convention on the Rights of Persons with a Disabilities**, recognising the need to support persons with a disability to make, participate in and implement decisions that affect their lives
  - ❖ Setting safeguards and limits on orders made



# General principles



- ❖ A person with a disability who requires support to make decisions should be provided with **practicable and appropriate support** to enable the person, as far as practicable in the circumstances –
  - ❖ to make and participate in decisions affecting the person; and
  - ❖ to express the person's will and preferences; and
  - ❖ to develop the person's decision-making capacity
- ❖ The **will and preferences** of a person with a disability should direct, as far as practicable, decisions made for that person;
- ❖ Powers, functions and duties under this Act should be exercised, carried out and performed in a way which is the **least restrictive** of the ability of a person with a disability to decide and act as is possible in the circumstances.



# Decision-making capacity



A person has capacity to make a decision in relation to a matter (decision-making capacity) if the person is able:

- ❖ to **understand** the information relevant to the decision and the effect of the decision; and
- ❖ to **retain** that information to the extent necessary to make the decision; and
- ❖ to **use or weigh** that information as part of the process of making the decision; and
- ❖ to **communicate** the decision and the person's views and needs as to the decision in some way, including by speech, gesture or other means



# Decision-making capacity principles



- ❖ A person is **presumed** to have decision-making capacity unless there is evidence to the contrary
- ❖ A person may have decision-making capacity in relation to some matters and not others
- ❖ Decision-making incapacity may be temporary
- ❖ Don't assume a person does not have decision-making capacity merely because the person makes a decision that, in the opinion of others, is unwise
- ❖ A person has decision-making capacity if it is possible for the person to make the decision with **practicable and appropriate support**
- ❖ Must be assessed at a time and in an environment that enables most accurate assessment



# VCAT can appoint...



- ❖ A **guardian** to make decisions about any specified matters relating to the person's personal or lifestyle affairs, eg
  - ❖ where and with whom the person lives
  - ❖ other persons with whom the person associates
  - ❖ medical treatment decisions
  - ❖ what services a person requires
  - ❖ whether the person undertakes education or training
  - ❖ daily living issues such as diet and dress
- ❖ An **administrator** to make decisions about financial or property affairs
- ❖ A **supportive guardian** or **supportive administrator** to support a person make decisions where they require support to do so



# Criteria for guardianship / administration

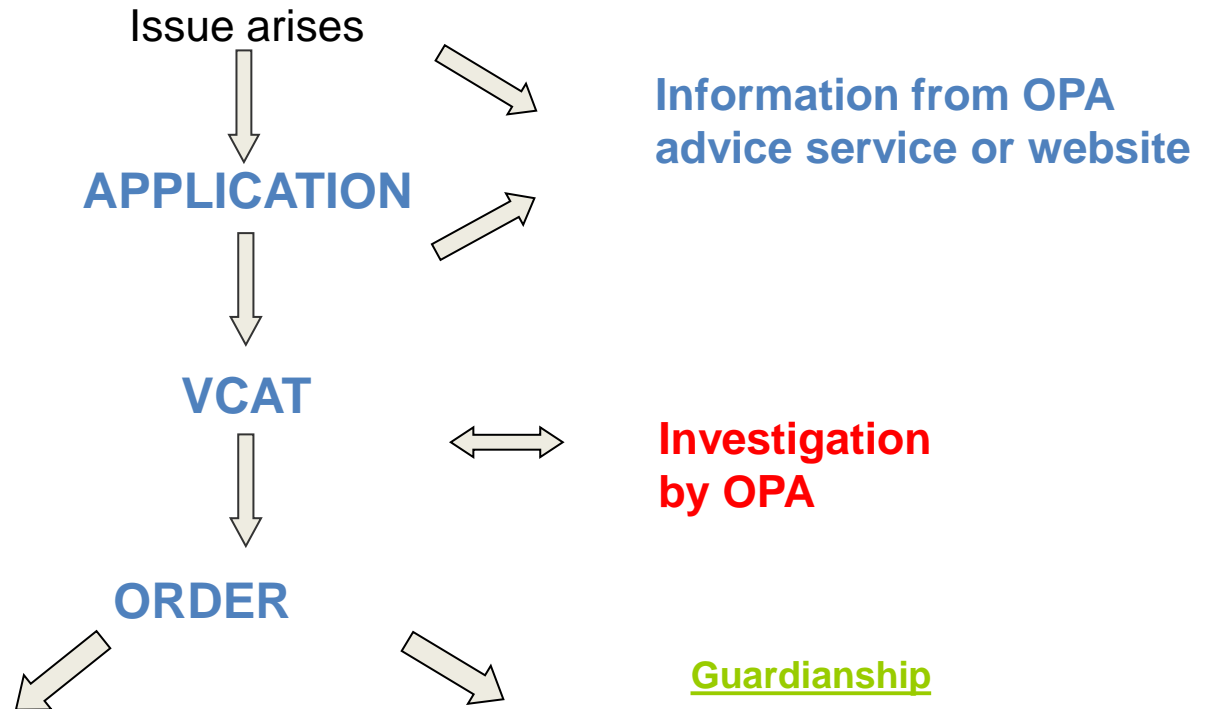


- ❖ Because of the person's **disability**, the person does not have **decision-making capacity** in relation to:
  - ❖ the **personal matter/s** (guardianship)
  - ❖ the **financial matter/s** (administration)
- ❖ The person is in **need** of a guardian or administrator
  - ❖ will and preferences of the person
  - ❖ can decisions be made by other informal means
  - ❖ wishes of those with interest in the application
  - ❖ desirability of preserving existing relationships
- ❖ The order will promote the person's **personal and social wellbeing**





# Application process



## Administration

- Private administrator
- State Trustees Ltd or other professional provider

## Supportive Administrator

- Private administrator

## Guardianship

- Private guardian
- Public Advocate

## Supportive Guardian

- Private guardian



# Who will be guardian?



- ❖ Usually a relative or friend of the person who:
  - will act in accordance with the person's will & preferences and comply with other duties
  - does not have any conflict of interests
  - is suitable, available and accessible
  - is familiar with the person's values and beliefs
- ❖ If there is no suitable and willing person, VCAT may appoint the Public Advocate as guardian
  - ❖ The Public Advocate delegates authority to OPA staff



# Guardianship decision-making



- ❖ Must give all practicable and appropriate effect to the person's known or likely **will and preferences**
- ❖ Can only override the person's will and preferences if it is **necessary** to do so **to prevent serious harm** to them
- ❖ If not able to determine their likely will and preferences, act in a manner which promotes the person's **personal and social wellbeing**
- ❖ Must act in a way that is **least restrictive** of the person's ability to decide and act as is possible
- ❖ Must act compatibly with the **Charter of Human Rights**



# OPA resources



## OPA Advice Service

- ❖ Ph **1300 309 337** (follow the prompts for medical advice line)
- ❖ Email [opa\\_advice@justice.vic.gov.au](mailto:opa_advice@justice.vic.gov.au)

## OPA website - [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

- ❖ Lots of medical treatment information and resources including:
  - ❖ Can Your Adult Patient Consent flowchart
  - ❖ A clinician's guide to medical decision making
  - ❖ ['HealthCARE conversations' video](#)

## OPA information sessions - <https://www.publicadvocate.vic.gov.au/opa-s-work/information-sessions>

