



In the Coroners Court of Victoria

COR 2020 004205

Finding into death without inquest

Deceased: [REDACTED]

RESPONSE ON BEHALF OF THE PUBLIC ADVOCATE

Thank you for providing Judge John Cain's finding without inquest into the death of [REDACTED]
[REDACTED] I offer my deepest condolences to her loved ones.

RECOMMENDATIONS TO THE PUBLIC ADVOCATE

1. The Public Advocate holds an independent statutory office, accountable to the Victorian Parliament, which has been established to protect and promote the human rights and dignity of people with disabilities in Victoria.
2. The functions of the Public Advocate are set out in section 15 of the *Guardianship and Administration Act 2019*, Vic (**GAA 2019**) and the powers and duties of the Public Advocate are set out in section 16 of the GAA 2019, and various other Acts.
3. On 5 March 2025, the Office of the Public Advocate (**OPA**) received notice of the finding into death without inquest in relation to the deceased, [REDACTED] the **finding**). The finding includes the following recommendations made under section 7(2) of the *Coroners Act 2008* (Vic) directed to OPA for response:
 1. *That the Office of the Public Advocate whenever they become aware of any allegations of neglect or abuse of a represented persons where a guardianship and administrative order is made by VCAT conduct a thorough investigation. This investigation could be carried out by the Office of the Public Advocate or another agency at their request. The outcome of the investigation should inform the guardian advocate's decision-making, where appropriate*
 2. *When implementing the VAGO recommendation that the Office of the Public Advocate "review and update its guidance about allocating orders and balancing the risk of harm when making decisions", the Office of the Public Advocate should review their training, policies, procedures and guidelines to ensure guardian advocates have the guidance and skills necessary to appropriately assess the risks of harm to represented people which may emanate from neglect and unmet care needs.*
 3. *That the Victorian Government make available appropriate funding to the Office of the Public Advocate to enable it to implement all of the recommendations from the VAGO report.*
4. In accordance with section 72(3) of the *Coroners Act*, OPA provides the below response to the recommendations.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION 1:

That the Office of the Public Advocate whenever they become aware of any allegations of neglect or abuse of a represented persons where a guardianship and

administrative order is made by VCAT conduct a thorough investigation. This investigation could be carried out by the Office of the Public Advocate or another agency at their request. The outcome of the investigation should inform the guardian advocate's decision-making, where appropriate.

5. An alternative to the Coroner's recommendation will be implemented. This is because the recommendation partially exceeds OPA's statutory functions and OPA is not resourced to undertake this work.

Reason for alternative

6. Where allegations are raised relating to guardianship orders,¹ the Public Advocate's investigatory functions turns on whether the Public Advocate is appointed as the proposed represented person's guardian or not. If they are appointed as guardian, they (or the allocated advocate guardian) will generally become aware of allegations once appointed and can investigate and advocate for the represented person in their capacity as guardian.
7. If the Public Advocate is not appointed as guardian, OPA generally does not become aware of allegations of abuse and neglect in guardianship (or administration) proceedings unless VCAT refers the matter to OPA for investigation. Accordingly, OPA relies to some extent on VCAT's processes.
8. Where a person applies to VCAT for a guardianship order but does not propose any person to be appointed as the guardian, the Public Advocate is entitled to be notified of the application, the hearing, and any order made.² The legislative framework envisages the applicant providing a copy of the application to the Public Advocate, while VCAT notifies the Public Advocate of any hearing. In practice, applicants generally do not provide OPA with a copy of the application.
9. When VCAT sends OPA notices of hearings, it does so in bulk. This takes the form of a single PDF document including all notices for the relevant period. VCAT does not provide any other supporting documents. OPA is unable, solely from the notice of hearing, to identify whether any matter involves an allegation of abuse or neglect of a proposed represented person.
10. One way the Public Advocate becomes aware of allegations of abuse or neglect is when they are appointed as the person's guardian (and VCAT provides OPA the notice of appointment and relevant documents). The Public Advocate is not appointed as a guardian in most guardianship cases. This is because VCAT may only appoint the Public Advocate as guardian if there is no other person who satisfies the requirements for appointment as a guardian: they are a 'guardian of last resort'.³
11. Where the Public Advocate is appointed guardian, the allocated advocate guardian is required to consider these allegations as part of their decision-making processes. OPA is committed, and will take steps, to improve practice ensuring the recommendation is fed through in the development of guidance material, as outlined below.
12. However, where the Public Advocate is not appointed as a person's guardian, this recommendation is dependent on OPA's funding, and it is impractical to implement this recommendation without detracting from other core functions.
13. The Public Advocate does not participate in most guardianship proceedings — they become aware of an allegation if VCAT refers the matter to OPA for investigation.

¹ Allegations relating to financial abuse or exploitation are generally referred to the administrator. State Trustees Limited is usually appointed as the administrator where there is no other person suitable to be appointed

² *Guardianship and Administration Act 2019*, section 26

³ *Guardianship and Administration Act 2019*, s 33

14. VCAT currently has the power to refer any matter to OPA for investigation, including matters involving allegations of abuse, neglect, or exploitation.⁴ OPA, through its investigations team, conducts these investigations and provides VCAT with a report with their findings. To assist OPA in performing this function, the GAA 2019 empowers the Public Advocate to compel any person or organisation to provide information for the purposes of these investigations.⁵
15. Although the scope of the investigations is limited to the specific matters referred, officers will generally alert VCAT to any allegations of abuse or neglect they identify during their investigation (regardless of the scope of the referral).
16. OPA has limited resources to extend the scope of matters it investigates:
 - This issue has been repeatedly raised, including in the Coroner's third recommendation the Victorian Government 'make available appropriate funding to the Office of the Public Advocate to enable it to implement all of the recommendations from the VAGO report.'
 - These resources must be directed to its core functions, as reflected in the GAA 2019. These functions form the basis of budget bids and have public performance measures outlined in Budget Paper No.3: Service Delivery.
 - Although OPA is empowered to engage an external agency to 'carry out an inspection or an audit', limited resources preclude it from doing so. OPA does not receive funding enabling the engagement with, and payment of, such services provided by external agencies.
17. Within this resource framework, it is not feasible to investigate '*any allegations of neglect or abuse*' it becomes aware of once a guardianship or administration order is made. There is a deference in these circumstances to VCAT processes and other organisations better placed to investigate the allegation, such as Victoria Police. Indeed, some guardianship applications are made due to potential abuse, but the applicant proposes, and VCAT accepts, a suitable guardian that is not the Public Advocate. There is no need for OPA to investigate such allegations.
18. Further, the Public Advocate has limited investigatory powers, an issue the Victorian Law Reform Commission previously discussed. Although they have the power to compel any person to provide information, as noted above, they are unable to enter and inspect private premises. The Public Advocate can only enter and inspect 'institutions', which is defined by reference to other Acts.⁶
19. In its 2012 report on Guardianship, the Commission found there was 'broad support' for its proposals to expand and strengthen the Public Advocate's investigatory powers.⁷ One proposal was to empower the Public Advocate to enter premises with a warrant if they reasonably believe there is a person with a disability who has been neglected, exploited, or abused.⁸ When considering this proposal, the Commission acknowledged there should be 'clear lines of responsibility concerning investigation of abuse of people with disabilities to ensure that potential police investigations are not compromised or contaminated.'⁹ This recommendation was not incorporated in the GAA 2019.
20. In relation to investigating allegations of neglect or abuse of a represented person where an administration order is made, it is noted that the Public Advocate does not receive notice where such orders are made. OPA only becomes aware of the appointment of an administrator where the Public Advocate is also appointed guardian for the same represented persons and is usually required to work with the administrator to give effect to certain decisions. As detailed below, where there are concerns related to financial abuse or exploitation for a represented person under the

⁴ See *Victorian Civil and Administrative Tribunal Act 1998*, schedule 1, clause 35

⁵ *Guardianship and Administration Act 2019*, section 16(i)

⁶ *Guardianship and Administration Act 2019*, section 17

⁷ Victorian Law Reform Commission, *Guardianship* (Report No 24, 2012) at [20.40]

⁸ Victorian Law Reform Commission, *Guardianship* (Report No 24, 2012) at [20.38]

⁹ Victorian Law Reform Commission, *Guardianship* (Report No 24, 2012) at [20.40]

Public Advocate's guardianship, advocate guardians are required to act in accordance with practice guidance to address these concerns, usually through an application to VCAT for an administration order.

21. It is also open to VCAT to refer matters to OPA for investigation relating to allegations of financial abuse and consideration of the need to appoint an administrator. When receiving such a referral, the investigators will obtain relevant financial records and all possible evidence to provide to VCAT to assist them determine the matter.

OPA will commit to the following alternative

22. Where VCAT appoints the Public Advocate as guardian, the allocated advocate guardian will inquire into the circumstances and, with the information gathered along with their own interactions with the represented person, must use this in their harm considerations to inform their decision making.
23. At a practical level, when allegations / concerns of abuse or neglect are raised a guardian will work with relevant parties, where appropriate and safe to do so, to address the allegations, such as:
 - Direct supports
 - Family / friends / members of their community
 - Victoria Police
 - Peak bodies (eg Safe and Equal)
 - Clinical professionals (eg medical practitioners, neuropsychiatrists, forensic risk specialists)
24. This has resulted in actions such as complaints to relevant regulators, such as the NDIS Quality and Safeguards Commission, and applications for intervention orders (or an expansion of the guardian's powers).
25. Of course, a guardian's role does not end with the single allegation. Guardians must act assertively and proactively to advocate for the represented person and protect them from neglect, abuse or exploitation.¹⁰ This should translate to providing oversight over the period of the Order. The degree of oversight will depend on the matter, but OPA acknowledges the importance of meeting with a represented person (whether in person or by other means) throughout the duration of the Order to continue to ascertain will and preferences and assess the person's wellbeing.
26. While this does not reflect all actions his Honour considers an adult safeguarding framework might include, as outlined at paragraph [62] of the finding, these are actions a guardian can perform in accordance with their duties and powers.
27. Guardians can also request reports and assessments from suitable professionals where appropriate, but these reports must be limited to the guardian's functions, acknowledging such requests can represent an infringement on the represented person's rights, including their right to privacy (and a guardian's corresponding duty of confidentiality). Such reports can also incur additional expenses, either to OPA or the represented person (including their NDIS Plan, if applicable).
28. OPA is committed to improving its processes and building advocate guardians' capability to ensure they can perform their functions. Accordingly, as part of its review of current guidance, OPA will develop a standalone resource addressing how to respond to allegations of neglect or abuse. A key section of this guidance will relate to interrogating the allegations and basing any subsequent decision on concrete evidence — reducing the reliance a guardian may have on the statements of one person, particularly where that person has a close connection with the represented person.

¹⁰ *Guardianship and Administration Act 2019*, section 41. Guardians are also required to act honestly, diligently, and in good faith; and exercise reasonable skill and care

We also note this action interacts with the Coroner's subsequent recommendation, regarding reviewing practice guidance, detailed below.

RECOMMENDATION 2:

When implementing the VAGO recommendation that the Office of the Public Advocate "review and update its guidance about allocating orders and balancing the risk of harm when making decisions", the Office of the Public Advocate should review their training, policies, procedures and guidelines to ensure guardian advocates have the guidance and skills necessary to appropriately assess the risks of harm to represented people which may emanate from neglect and unmet care needs.

29. The Coroner's recommendation will be implemented.
30. As noted in his Honour's finding at paragraph [53], the legislative framework has changed since [REDACTED] passing with the introduction of the 2019 GAA, resulting in a change in OPA practices. Further, this recommendation corresponds with VAGO's recommendations in its report to
 - review and update practice guidance, including guidance about allocating orders and balancing the risk of harm when making decisions (recommendation 3); and
 - Improve its training program by introducing mandatory training for guardians and investigators that, at a minimum, covers: its legislative obligations, managing complaints, communicating effectively, making decisions that promote human rights and an individual's will and preferences; and recording staff attendance at all training sessions (recommendation 4)
31. In OPA's response to VAGO's recommendations, included in the Appendix of that report, OPA indicates a target completion date of December 2025 and June 2025, respectively, for these recommendations.
32. Accordingly, work related to this recommendation has been in progress since 2020 (following the commencement of the GAA 2019), with substantial work occurring from May 2024 in response to VAGO's recommendations.
33. OPA notes that balancing the risk of harm when making decisions has broader application than solely decisions to do with allocations. OPA's view is guidance about balancing the risk of harm when making decisions is a higher priority than guidance on allocating orders.
34. In conducting these reviews, OPA also recognises staff across the organisation are required to assess and balance the risk of harm, although to varying degrees. There are a range of factors which may affect staffs' ability to appropriately assess risks of harm to represented persons and OPA's review is considering the broader context, such as:
 - **Practice guidance** — improving existing, and developing new, practice guidance for staff to refer to and follow. This includes recordkeeping guidance and processes, ensuring decisions are recorded consistently, accurately, and in accordance with OPA's obligations (including under the *Charter of Human Rights and Responsibilities Act 2006*).
 - **Allocation process** — amending processes for the allocation of VCAT orders to advocate guardians (and investigators).
 - **Training** — building on staff capabilities, understanding, and confidence in fulfilling their duties consistently with the Public Advocate's legal obligations. This includes training staff in appropriately assessing harm.
 - **Staff Wellbeing** — supporting staff in performing their role without harming their own health and wellbeing.
35. However, OPA is committed to improving processes supporting its statutory objectives, including to promote the human rights of persons with disability, and protect persons with disability from

abuse, neglect and exploitation. OPA will consider the Coroner's recommendations, in the context of the finding, while reviewing these policies.

36. Before addressing OPA's progress in implementing VAGO's, and his Honour's, recommendations, it is important to outline the statutory principles OPA, and advocate guardians, must abide by.
37. When guardians make decisions under the GAA 2019, they must act in accordance with the general principles in section 8 and the decision-making principles in section 9.¹¹ This includes, where practicable:
 - Supporting the represented person to make and participate in decisions, express their will and preferences, and develop their decision-making capacity. (The concept of 'will and preferences' comes directly from Article 12 of the Convention on the Rights of Persons with Disabilities.)
 - Acting in a manner which is the least restrictive of the represented person's ability to decide and act as is possible in the circumstances.
 - Giving all practicable and appropriate effect to the represented person's will and preferences, if known.
 - If unable to determine the represented person's likely will and preferences, acting in a manner which promotes the represented person's personal and social wellbeing. This may include through recognising the person's inherent dignity, respecting their individuality, and having regard to their existing supportive relationships.
 - Only overriding a represented person's will and preference if necessary to prevent serious harm to the represented person.
38. Accordingly, the represented person's will and preference, as far as they can be ascertained, takes precedent and can only be overridden if the relevant harm is 'serious'. Our review of organisational documents, and assessments or balancing of risks of harm, occurs within this context.
39. We address our progress below by reference to the areas noted at paragraph [34].

Practice guidance

40. Reviewing and developing practice guidance is a significant task.
41. A substantial amount of work was completed in preparation for the commencement of the GAA 2019 framework, with further developments over time as part of regular reviews of these documents. Some examples include developing:
 - A summary fact sheet of a guardian's role to make decisions, take relevant actions, and how to keep a record of these tasks.
 - Standard operating procedures for staff to follow once allocated a guardianship order, including a requirement to conduct a risk assessment.
 - Guidance on decision-making within the statutory framework (which is subject to further review following VAGO's report.)
 - Risk reduction and harm mitigation assessments for staff to use when considering harm, identifying issues needing to be addressed, and whether the harm can be mitigated.
42. Following VAGO's recommendations, and their finding of areas of improvement in guidance documents, OPA commenced an audit of its organisational documents. Given the magnitude of this task, OPA engaged an external consultant to support this audit.
43. As part of this audit, we found gaps in the issues addressed in current guidance. We also found some redundancy across the organisation with similar issues being addressed in separate documents.

¹¹ *Guardianship and Administration Act 2019*, section 41

44. As a result, OPA has adopted a considered and staged approach in progressing this recommendation, starting with identifying current document management systems, and priority issues requiring guidance development or review.
45. This work is ongoing with a target implementation date of December 2025. As part of our review, we will be:
- Improving guidance on how decisions are recorded, acknowledging gaps VAGO identified in its report and inconsistencies across OPA. This guidance will emphasise how to appropriately document harm assessments and human right analyses for any decision.
 - Developing tools to support guardians in making robust decisions. These tools are intended to be easily utilised and reflect the statutory decision-making principles, including consideration of the represented person's will and preferences, the harm posed (and whether it is serious, by reference to a risk matrix), and the relevant human rights in making the decision (acknowledging the importance of the Charter in decision-making).
 - Updating previous guidance to ensure it is relevant and up to date

Allocation process

46. The allocation process is OPA's first opportunity to assess new guardianship orders and investigation referrals. OPA acknowledges the importance of getting it right as it allows for appropriate prioritisation of matters and enables us to respond accordingly.
47. We have amended our allocation processes for new investigation referrals and guardianship orders. We have also amended how matters are monitored across the period of the relevant orders, removing workload from guardians who already have high caseloads. These amendments address both the timeliness in responding to each order (a concern VAGO raised) and supporting staff to perform their roles.

Investigation referrals

48. Once OPA receives an investigation referral, the administrative team provides an information sheet to all interested persons listed in the referral. This allows for prompt notification of the matter, outlines OPA's role, and provides contact details allowing parties to contact OPA if they have any queries or concerns.
49. Referrals are allocated to investigators based on priority — this is determined through both VCAT's basis of referral and documents it provides.
50. Following allocations, OPA aims for all investigators to contact the proposed represented person within 14 days (or within 24 hours if VCAT has referred the matter for an urgent investigation).

Guardianship order triaging

51. Triage processes regarding guardianship orders continue to be refined to ensure represented persons understand OPA's role as a guardian, know who to contact, and meet their guardian as soon as practicable.
52. These changes have included the following (in progress) actions:
- Developing a complexity tool that identifies and measures the complexity of an order, informing allocation to a guardian of commensurate experience. New guidance is being developed in response to VAGO's recommendations on this point.
 - Reducing time taken between receipt of guardianship orders and first contact with the represented person (outlined in further detail below).
 - Providing further guidance to conduct a preliminary risk assessment informing the priority status of any new matter.

53. Consistent with VAGO's recommendation, OPA has, and continues to, reduce delays in contacting represented persons once a guardianship order is made. This has included the following changes:
- Upon receipt of a guardianship order, the administrative team sends the represented person a guardianship factsheet providing information regarding guardianship and contact details for the Intake team who manage the file until it is allocated to a guardian.
 - Trialling an enhanced triage process to prioritise early engagement with represented persons so that decisions can be made quickly if possible and acted upon. This includes:
 - Seeking early resolution and revocation of guardianship where relevant.
 - Supporting the intake team to meet with represented persons as soon as the order is triaged. The time of the meeting can vary depending on the represented person, stakeholders, and form of contact (ie whether an online or face to face meeting is appropriate).
 - Refining documentation procedures, such as through a dedicated field in OPA's CRM relating to first meetings to ascertain a represented person's will and preferences. This allows for consistent recording of initial contact with represented persons. Proper recordkeeping also allows for efficient review and monitoring of orders, as well as OPA's performance.
 - Updating standard operating procedures regarding triaging matters to reflect these tasks and functions.

Monitoring orders

54. OPA is committed to ensuring represented persons continue to be supported throughout the period of their guardianship. This has occurred though, among other initiatives, creating new 'guardianship support officer' positions, and introducing a 'monitoring list'.
55. Guardianship support officers support the advocate guardianship program. On behalf of the allocated guardian, they can visit represented persons, contact relevant stakeholders, and monitor the implementation of decisions as necessary.
56. The 'monitoring list' allows for oversight of guardianship orders. Where a guardian has made the relevant decisions for a represented person, but the VCAT order has not yet lapsed (and there is no suggestion it should be revoked early), the guardian will transfer the matter to a 'monitoring list'.
57. Guardianship support officers proactively manage these lists. One way they may do this is to follow-up in cases where the guardian has not visited the represented person for some time. This provides an opportunity to assess the benefits of any decisions made and the wellbeing of the represented person while also providing advocacy where necessary. It also reduces the reliance guardians may have on service providers to provide accurate details regarding a represented person.
58. Where the order is no longer required, guardianship support officers may apply, through the guardian, to VCAT to have the order revoked.
59. This process balances the restrictions on a represented person's rights due to the guardianship order, with the need to ensure decisions have been implemented appropriately.
60. Both initiatives reduce staff workloads and provide regular monitoring and review of guardianship matters. This reduces the risk of any guardianship matters 'falling through the cracks' following periods where there has not been any contact, or need for a decision to be made.

Training

61. Following VAGO's recommendation, OPA created a new role of a 'Learning and Development Coordinator' who is tasked with reviewing, and improving, OPA's training program. This includes of OPA's learning management system, induction processes, and trainings currently offered.
62. In implementing this recommendation, and supporting staff's ability to assess risks of harm:

- The Coordinator considers further learning and development opportunities for staff and engages with other organisations to provide capacity building workshops. For example, one development area identified relates to matters involving family violence. Accordingly, the Coordinator is engaging with the Peak body 'Safe and Equal' to organise a training regarding family violence matters tailored to OPA's needs.
- Regular training is provided to staff at forum days. These trainings may address novel issues or provide refreshers on key issues, such as decision-making in a public law context and when considering the Charter of Human Rights.

63. All initiatives aim to develop staff capability, in turn supporting the Public Advocate perform their statutory safeguarding function.

Staff wellbeing

64. OPA acknowledges our ability to support our community is limited when our staff do not feel supported themselves. OPA is committed to promoting staff wellbeing and providing a workplace staff feel safe to attend.

65. Some steps taken in supporting staff wellbeing include:

- Following concerns with workloads and associated stress, OPA has set limits on the number of cases an advocate guardian can manage. The introduction of guardianship support officers further reduced some of the collective workload.
- Routine supervision sessions. Supervision is key in supporting staff's wellbeing and provide consistent oversight of matters. We have also sought to develop supervisor's leadership capabilities, providing them with skills necessary to respond to staff concerns.
- Providing avenues to discuss challenging matters amongst peers, such as through team case conferences. The intention is for staff to 'share the load' and lessen any burden any individual may hold.

RECOMMENDATION 3:

That the Victorian Government make available appropriate funding to the Office of the Public Advocate to enable it to implement all of the recommendations from the VAGO report.

66. The Public Advocate acknowledges, and is thankful for, his Honour's recommendation. OPA will continue to work with the Victorian Government to raise funding considerations that are required in order to implement both his Honour's and VAGO's recommendations.

Signed:



Daniel Leighton

Acting Public Advocate

Office of the Public Advocate

Date: 4 June 2025