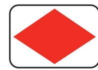

Office of the Public Advocate

“I’m too scared to come out of my room”

Preventing and responding to violence and abuse between co-residents in group homes

About the cover image

The cover of this report is an interpretation of an artwork by Julie Potomianos entitled *'Urban Landscapes II'*. OPA purchased *'Urban Landscapes II'* from the State Trustees Ltd *'connected'* art exhibition celebrating the works of artists living with a disability or an experience of mental illness.

'Dynamic' is the work that best describes this very talented artist. Julie, who cannot speak or hear, seems able to absorb most instructions with minimum difficulty. In no time she grasped the basics and was off and running. Julie also has a natural ability with materials and tools, and with form and colour. Her signture image of the 'house' features in her latest series of oil pastel works on paper.

Acknowledgement of Country

The Office of the Public Advocate (OPA) acknowledges Victoria's Aboriginal Communities and their rich culture. OPA pays respect to their Ancestors, Elders and communities, who are the custodians of the land on which we work.

Client stories

The client stories used to illustrate important points in this report have been de-identified. Names are fictitious.

"I'm too scared to come out of my room"
Preventing and responding to violence and abuse between co-residents in group homes

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Introduction from the Public Advocate

The Office of the Public Advocate's (OPA) mission is to protect and promote the rights, interests and dignity of people with a disability. It is a statutory office, independent of government and government services.

By virtue of the work across many program areas, particularly the Community Visitors and Advocate Guardian programs, OPA has developed a unique understanding of the issue of violence in group homes. For the past 30 years, OPA's Community Visitors have been reporting findings in relation to incidents of violence and abuse to the Victorian Parliament in its Annual Report.

As a result of this work, the Office has long held concerns about the endemic levels of violence in group homes, and those concerns have been exacerbated by the rapidly changing landscape in which disability services are being provided. OPA was compelled to produce this report by the continuing stories of people with a disability remaining in unsafe housing, or being driven into the criminal justice system, as a result of failures of the service system.

The primary focus of the report is OPA's ongoing concerns with the group home model. Community Visitors do see examples of very good group homes and the availability of high-quality group homes is essential to ensure that people with a disability are able to realise their right to choice and control over where they live. However, for many people the group home model is not working.

This report draws directly on the lived experience of people with cognitive impairment who, I was saddened but not surprised to discover, had all experienced or witnessed violence and abuse in a group home setting, despite not being recruited on that basis. I thank all of the self-advocates who participated in the consultations for sharing their powerful and painful stories with us in the hope of a better future for others.

The report also draws on de-identified case stories, which starkly illustrate the impact of system failures on the lives of those we work with. The stories identify five key factors that impact the effective prevention of, and response to, violence in group home settings, namely; choice and control, workforce, responding to and reporting abuse, relocation and eviction of residents, and justice system responses. Whilst the incidents referred to in the report occurred prior to 1 July this year, the report warns that the new regulatory framework may provide weaker protections for some of the most vulnerable people using disability services.

This report would not be possible without the generous contribution from many people and organisations who share our vision for a society in which the human rights of people with a disability are fully realised. In particular, thank you to Eleanore Fritze, VALID for facilitating and assisting with the consultations with the self-advocates, participants at the roundtable and individual consultations, and to everyone who provided thoughtful and considered feedback on drafts of the report.

Colleen Pearce
Public Advocate

Executive Summary

Thousands of Victorians with disability live in shared supported accommodation or group homes where violence and abuse between residents is disturbingly common. Over many decades, the Office of the Public Advocate (OPA) and Community Visitors have uncovered and reported on ongoing violence and abuse in these settings. We hear from many residents living in fear in their own homes where abuse has been normalised and tolerated.

While the Victorian Government has made a clear legislative and policy commitment to zero tolerance of abuse in Victorian disability services, the transition to the National Disability Insurance Scheme (NDIS) creates an entirely new framework of funding and regulation of accommodation services for people with disability. The reform adds to existing fundamental and systemic barriers to preventing, identifying, and responding to instances of violence or abuse between co-residents in group homes. It is in the context of this important reform and the start of a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that OPA presents this report.

OPA undertook this project to:

- identify the causes of violence and abuse between co-residents, and potential means of addressing these, including by:
    - ensuring choice and control
    - culture change
    - addressing workforce challenges
- explore the effectiveness of existing laws and policies applying to violence and abuse occurring in group homes
- consider how the safety and rights of all residents can be protected, without driving perpetrators or victims into inappropriate accommodation, homelessness or jail
- consider the role of disability services in responding to violence and abuse between co-residents in group homes
- consider the relevance and application of justice system responses in this context.

Providing a platform for the voices of people with lived experience was central to this project's aims. To achieve this, two consultations with group home residents (i.e. self-advocates) were facilitated by the Victorian Advocacy League for Individuals with Disability (VALID). OPA also brought together key policy and practice leaders for a roundtable discussion, which included a presentation by a self-advocate. These consultations assisted to uncover the complexity of the issue and aimed to identify shortfalls in policy and practice that need to be resolved to eliminate violence in group homes.

This report draws on existing evidence, the experience and findings of OPA and Community Visitors, together with the comments and ideas expressed in the consultations with self-advocates and sector leaders, to present five key aspects of the issue of resident-to-resident violence in group homes. They are:

- choice and control in accommodation
- workforce
- responding to and reporting allegations of violence and abuse
- relocation and eviction of residents
- justice system responses.

Finally, informed by the feedback provided in consultations, the report makes 38 key recommendations which OPA believes will help prevent and provide more appropriate responses to violence and abuse between group home co-residents.

Recommendations

Choice and control

1. In its review of the New Starter Program, the National Disability Insurance Agency should ensure that all planners and Local Area Coordinators (LACs) have relevant disability and mental health training, including training in communicating with people with communication support needs.
2. In its review of the New Starter Program, the National Disability Insurance Agency should promote a person-centred approach for planners, focused on participant outcomes.
3. The National Disability Insurance Agency should amend the SDA operational guideline to ensure that the goals and aspirations of participants are central to decisions about SDA type and location.
4. The Australian Government should amend the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to remove rules which imply that participants requiring 24/7 supports also require shared supported accommodation.
5. In order to meet Australia's obligations under the United Nations' *Convention on the Rights of Persons with Disabilities*, the National Disability Insurance Agency should ensure that all NDIS participants with unmet decision-making support needs are able to purchase such supports through their NDIS plans.
6. The Australian Department of Social Services should extend the National Disability Advocacy Program (NDAP) to address funding shortfalls for advocacy services.
7. The National Disability Insurance Agency should act on the Independent Advisory Council's recommendation to retain the separation of housing infrastructure and support as a policy imperative. This includes putting in place a policy that support coordinators, accommodation, and core support providers should ordinarily be independent of each other.
8. The National Disability Insurance Agency should act on the Independent Advisory Council's recommendation to implement a targeted strategy to foster the growth of contemporary and innovative options for housing and support under the NDIS.
9. As recommended by the Productivity Commission, the Council of Australian Governments (COAG) Disability Reform Council should clarify and publish the roles and responsibilities of the Australian, State and Territory Governments, the National Disability Insurance Agency, and the NDIS Quality and Safeguards Commission in relation to NDIS market stewardship.
10. The Australian Government should promote wider access to home share models and other emerging innovative housing options which foster community connections.

11. The National Disability Insurance Agency, in conjunction with Australian, State and Territory Governments, should adjust market levers and policies (including the pricing framework) to ensure the existence of sufficient numbers and diversity of SDA and crisis accommodation providers, and should also ensure that sufficient funds are provided so that SDA provision is able to meet future demand.
12. The National Disability Insurance Agency should establish a central register for participants seeking SDA.
13. The NDIS Quality and Safeguards Commission should provide guidance to SDA and SIL providers around effective and equitable tenancy management.

Workforce

14. The National Disability Insurance Agency should require that all behaviour support practitioners and SIL workers have a competency standard equivalent to Certificate IV in disability to ensure consistent and safe supports across the system and to help prevent potentially harmful behaviours.
15. The Australian Government should review the *Growing the NDIS Market and Workforce Strategy* to ensure it addresses recommendations made by the Productivity Commission's study of NDIS Costs in relation to workforce targets.
16. The NDIS Quality and Safeguards Commission should consider the recent report by the Victorian Disability Services Commissioner, *Building safe and respectful cultures in disability services for people with disability*, and use it to inform the development of best practice guidelines for NDIS providers on creating safety within services.
17. The Australian Government, in collaboration with the NDIS Quality and Safeguards Commission, should amend the *National Disability Insurance Scheme (Code of Conduct) Rules 2018* and related guidance to reflect a zero-tolerance approach to abuse.

Responding to violence

18. The National Disability Insurance Agency should enable contingency funding to be immediately accessible to participants when crises arise. This approach would require:
    - designated liaison and emergency contact points
    - procedures within the National Disability Insurance Agency (or authorised agencies) which are responsive during and outside of business hours
    - fast-tracked plan reviews and approval processes.
19. The National Disability Insurance Agency should fund psychological and/or trauma-informed counselling supports when the need for those supports is related to an incident of violence, abuse, or neglect that occurred in the provision of disability supports.

Reporting and oversight

20. The NDIS Quality and Safeguards Commission should publicly report aggregate data on violence, abuse, neglect and exploitation occurring in NDIS-funded services.

21. The *National Disability Insurance Scheme Act 2013* (Cth) should be amended to include reference to legislation authorising the Victorian and other Community Visitors Programs as a key component of the NDIS safeguarding arrangements. Amendments should ensure that:
    - Community Visitors are entitled to see copies of a participant's NDIS plan, any documentation related to a participant's SDA tenancy arrangements, as well as the documents they are currently authorised by legislation to see when visiting.
    - Community Visitors and other comparable entities who are appointed under state and territory legislation are entitled to share information to the extent necessary to advocate for participants and raise concerns with relevant complaints bodies.
22. The National Disability Insurance Agency and the NDIS Quality and Safeguards Commission should establish protocols or memoranda of understanding (MOU) with organisations and statutory authorities with whom they have ongoing working relationships to facilitate information sharing in a way that assists the parties to perform their respective powers and functions.

Relocation and eviction

23. The Victorian Government should seek to amend the *Residential Tenancies Act 1997* (Vic) to require SDA providers to offer SDA residency agreements as the default agreement to (prospective) residents in all SDA properties.
24. The Victorian Government should extend the scope of the Community Visitors Program to provide independent monitoring of NDIS funded non-SDA shared supported accommodation settings in Victoria.
25. The NDIS Quality and Safeguards Commission should produce guidelines for SDA providers in relation to their obligations to support participants when a notice of relocation or eviction is served.
26. The National Disability Insurance Agency should publish, consult on, and implement its Maintaining Critical Supports and Immediate Support Response policy and framework as a matter of urgency. This policy and framework should ensure that:
    - provider of last resort mechanisms are established as an ongoing component of the NDIS market
    - multiple designated providers of last resort are clearly identified
    - providers of last resort are adequately resourced to enable them to respond immediately in situations of market failure (which includes having staff available on short notice)
    - the providers and their staff have specialised experience, skill and expertise that are relevant to the specific needs of participants
    - clear procedures exist to guide planners, local area coordinators and support coordinators when the need arises for a provider of last resort to provide any approved support (not just 'critical' supports)
    - participant plans have built-in flexibility for situations in which a provider of last resort is required, including the ability to access contingency funding (as recommended earlier)
    - as soon as possible, participants are transitioned back to support outside provider of last resort arrangements.

Justice system responses

27. The Victorian Government should seek to amend the *Family Violence and Protection Act 2008* (Vic) to:
    - explicitly state that co-residents in SDA accommodation are in 'family-like relationships' for the purposes of the Act and
    - ensure that, before making a Family Violence Intervention Order, the court is required to consider whether the respondent is able to understand the nature and effect of the order and comply with its conditions.
28. The Victorian Government should expand funding for legal and non-legal advice and advocacy to help people with disability to navigate and access the justice system.
29. The Victorian Government should ensure that outreach and advocacy supports are available to assist people with disability who have been victims of crimes to bring claims before the Victims of Crime Assistance Tribunal.
30. The Victorian Government should fund mandatory disability awareness training for all staff in the family violence sector. The training should be developed in consultation with people with disability.
31. The Victorian Government should expand funding for mandatory family violence training for disability workers.
32. The Victorian Government should fund mandatory disability awareness training for all justice staff to enable them to fulfil their obligations under the United Nations' *Convention on the Rights of Persons with Disabilities*. The training should be developed in consultation with people with disability.
33. The Victorian Government should encourage all Victorian Police stations to apply for the Communication Access Symbol accreditation.
34. Victoria Police should increase the capacity and availability of its disability liaison officers.
35. The Victorian Government should consider the evaluation of the Communication Intermediaries pilot, and, if it proves successful, should continue and expand the scheme to:
    - be available at all proceedings in all courts and tribunals, particularly family violence matters
    - be available for victims and alleged perpetrators.
36. The Victorian Government should introduce legislative reform to require Victoria Police to have an Independent Third Person (ITP) present when interviewing a person with a cognitive impairment or mental illness, irrespective of age. This should include alleged offenders, victims, and witnesses.
37. The Victorian Government should expand the role of the Independent Third Person program to:
    - provide support in hearings in courts and tribunals
    - provide referrals to service and support agencies.
38. The Victorian Government should pilot the use of restorative justice processes in situations where violence has occurred in SDA settings.

Sam's Story

Sam is a 50-year-old man who lives in Victoria. He loves all things footy, as well as op-shopping. One of the most important things for Sam is the relationship with his partner, Julie; he wishes to be near her and spend time with her.

Sam has an intellectual disability. There is some clinical evidence of cognitive impairment from a young age, which may have been exacerbated by a brain injury sustained from a car accident at five years of age.

As a child, Sam was placed in an institution where he reports having experienced physical and sexual abuse. He left the institution at 20 years of age to, unsuccessfully, trial living with his mother, before cycling through a variety of placements (including rooming houses and living independently in a caravan park).

In his mid-twenties, Sam met his current partner, Julie, and moved in to her family home with her parents and brother. Julie's father was very supportive of Sam and they developed a close relationship. During this time and for over 20 years, Sam had little need for or contact with disability services as he was well supported at home. He maintained employment with the same company who described him as a reliable worker.

Sadly, two years ago, Julie's father passed away. This was an important loss for Sam, one that affected his mental health and would drastically change his day-to-day life. Without their father, Julie and her family were no longer able to support Sam, and he moved to a Supported Residential Service (SRS). The level of supports offered in the SRS was insufficient for Sam, as there was no permanent care, especially needed at a time of grief and loss, the SRS eventually proved to be ill-suited to his needs. Sam wished to be closer to Julie and her family but could not find any available accommodation that could meet his support needs.

Sam has not coped well since Julie's father passed away; he lost his long-term job and, on multiple occasions, presented to the emergency department with symptoms related to stress and anxiety. The change in life circumstances represents a loss of independence as well as a rupture in community inclusion. This caused Sam's mental health to worsen to the point that his ability to communicate effectively was affected, as was his overall wellbeing, and periods of homelessness and many relocations. He began displaying 'behaviours of concern' that led to the breakdown of numerous accommodation placements that Sam has trialled since leaving the SRS. These other placements included other SRS, group homes, and motels. The ongoing behaviour problems reached such an extent that he now has criminal charges against him.

One year ago, Sam moved into a group home that is owned by Department of Health and Human Services (DHHS) that is now is funded 'in-kind' in the transition to the NDIS. Through this accommodation, Sam was deemed eligible for Specialist Disability Accommodation (SDA) funding (i.e. he gained de-facto eligibility for SDA). For some time, he was happy there, but the house was far away from Julie where he wished to be. He also wished to regain employment but was unable to secure a job due to his behaviours. Some months later, conflict arose between Sam and other residents in the house when Sam began displaying aggravating, aggressive, and sexually intrusive behaviours towards them. Sam demonstrated poor impulse control and inappropriate boundaries. He assaulted co-residents, resulting in two matters being investigated by police and an interim Intervention Order (IVO) being put in place at the request of one of the residents.

As a temporary response to the escalating incidents of violence, DHHS obtained six weeks in a respite service where Sam could stay on his own and receive supports. This was funded partially by the NDIS and mainly by DHHS, despite Sam having a sizeable NDIS package. Through the Complex Support Needs Pathway, the OPA delegated guardian advocated to find suitable accommodation. His clinical care team recommended that he should be supported to live with one or two other residents. Sam has been vocal about wanting to live close to Julie and thus, the guardian pressed to give effect to his wish.

While in respite, there was a real risk that Sam would be left without accommodation as his previous group home seemed an inappropriate place for him to return. The provider was also seeking to offer his now vacant room to someone else even though he had not yet found an alternative SDA to move into at the end of his six weeks in respite. During the process, the guardian refused to relinquish Sam's bed in the DHHS group home, as there were real concerns that he would become homeless unless another option was secured. This type of housing insecurity is unfortunately not uncommon for people with disability in Victoria.

The OPA delegated guardian advocated to ensure he be afforded secure tenancy to enable the appropriate supports to be put in place. The process of finding a suitable SDA was made complex by operational challenges that restricted Sam from exercising genuine choice and control. Firstly, DHHS at that time had no current vacancies within their housing stock that met Sam's requirements and, therefore, could not transfer him into one of its houses. Moreover, because Sam's group home was funded in-kind by DHHS, they advised they could not produce a quote to the NDIA regarding SDA or Supported Independent Living (SIL) supports. In this case, a provider must first agree to service provision before producing the quote for the proposed SIL services. The standard SIL quoting process further delayed the matter, which was already complicated for Sam's guardian who had no streamlined way to know whether there was any available SDA in the area where Sam wanted to live (i.e. near Julie) as there is no central registry of available SDA tenancies in the NDIS. After much effort however, it became clear that the SDA market was scarce.

These hurdles were not fully overcome when Sam's respite accommodation finished. The OPA delegated guardian instead chose to move Sam into an Office of Housing apartment close to Julie, where he now lives on his own and receives SIL supports through his NDIS plan. The guardian was initially reluctant to accept this offer as they feared it would affect his SDA eligibility and require Sam's case to be brought to the SDA panel for decision should he ever wish to move. However, with no other available option, the guardian was compelled to accept the offer.

Now, Sam's NDIS plan funds capacity building, allied health, and behavioural supports to work on improved relationships. A psychologist is funded who has developed a model of trauma-informed positive behaviour support, specific to Sam's needs that will help address underlying history that may be causing 'behaviours of concern.' This model targets supports to respond to the adverse experiences that Sam has survived, both in childhood and later in life, and seeks to understand the ways in which these experiences might be impacting his behaviours.

While Sam's story seemingly has a positive ending, the hardships he confronted should not be minimised. For nearly two years, he faced housing instability, multiple moves, and overall insecurity, when he should have been receiving supports and care during a time of emotional hardship. That Sam ultimately obtained a home required the continued involvement of DHHS and the fervent advocacy of a guardian.

1. Background

> There are three main factors contributing to violence: firstly, the group home environment, where we see inappropriate placements, and, particularly, a lack of alternative accommodation; secondly, workforce issues, such as lack of training, insufficient staff, high numbers of casualised staff and a lack of leadership; and, thirdly, cultural issues, particularly tacit acceptance and normalisation of violence and bullying.[1]
>
> Colleen Pearce, Public Advocate

Introduction

Just over 5,000 people with disability live in supported residential accommodation in Victoria[2] and 17,000 people live in group homes[3] in Australia.[4] Since deinstitutionalisation began in the 1980s, many people with cognitive disability have moved into these homes, which typically house around five residents and were, until 1 July 2019, owned, operated and staffed by the Department of Health and Human Services (DHHS) or other Community Services Organisations (CSO). Many residents did not have much, if any, choice in these arrangements.

In recent years, successive inquiries have documented disturbingly high rates of violence and abuse perpetrated against people with disability, particularly cognitive disability, in institutional or congregate care settings.[5] While the problem of staff-to-resident assaults has, appropriately, attracted some public attention, OPA has been concerned for many years about violence and abuse that occurs between co-residents in group homes.

1. Community Affairs References Committee, Parliament of Australia, Report on the Inquiry into abuse and neglect against people with a disability in institutional and residential settings (2015) 215.

2. Victorian Ombudsman, *Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 1 – the Effectiveness of Statutory Oversight* (2015) 13.

3.Under the *Disability Act 2006* (Vic) s 3(1): A 'group home' is 'a residential service which is declared to be a group home under section 64': A 'residential service' is 'residential accommodation –
   (a) 'provided by, on behalf of, or by arrangement with, a disability service provider; and
   (b) 'provided as accommodation in which residents are provided with disability services; and
   (c) 'supported by rostered staff that are provided by a disability service provider; and
   (d) 'admission to which is in accordance with a process determined by the Secretary'.

4. Independent Advisory Council to the NDIS, *Pathways to contemporary options of housing and support* (2018) 5.

5. Office of the Public Advocate (Victoria), *Violence Against People with Cognitive Impairments: Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria* (2010); Women with Disabilities Victoria, OPA and Domestic Violence Resource Centre Victoria, *Voices Against Violence* (2014) (seven papers); Victorian Ombudsman, *Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 1 – the Effectiveness of Statutory Oversight* (2015); Victorian Ombudsman, *Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 2 – Incident Reporting* (2015); Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Violence, Abuse and Neglect against People with Disabilities in Institutional and Residential Settings* (2015); Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 5, ch 31; Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Settings* (2016) ('Parliamentary Inquiry'); Australian Human Rights Commission, *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings* (2018).

In 2016, in response to the inquiry into abuse in disability settings, the Victorian Government announced that it "will take a zero tolerance approach to abuse of people with a disability and will ensure that if abuse or neglect does occur, there will be strong and effective processes in place to report, investigate and respond."[6] The government affirmed its commitment to "building a culture of zero tolerance of abuse in disability services" in the *State Disability Plan 2017-2020*[7] and in 2018 developed the State's first disability abuse prevention strategy.[8] A complex and evolving array of Commonwealth and State legislation, rules, policies and guidelines now touch on this issue by:

- recognising and protecting the human rights of people with disability
- providing for, regulating and overseeing disability supports and accommodation and
- governing responses by disability service providers and the justice system to allegations of violence or abuse.

It is obvious that a zero-tolerance approach towards violence or abuse committed by a staff member or support worker against a person with disability must include a strong criminal justice response. Whether that is the most effective, fair or appropriate way to prevent and respond to violence and abuse between group home co-residents is not as immediately clear. The challenge can be summed up as follows:

> "How can we ensure a safe, violence-free and socially-connected life for all people with disability that allows all people to flourish, including people who, without adequate support, can commit acts of violence? This is [a] 'wicked' [problem] because if you apply the full force of the law to a situation of co-resident violence, you may find one resident with a significant cognitive impairment being served with a family violence safety notice or intervention order, or a personal safety intervention order, without understanding what these notices or orders are. This can then result in violation of the requirements, followed by involvement in the criminal justice system [and ultimately, potentially, detention or homelessness]."[9]

The Australian Government has now focussed attention on the issue with the establishment a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability,[10] which will provide an interim report by 30 October 2020 and a final report by 29 April 2022.

With important reform occurring in the sector and with the commitment of a Royal Commission, it is timely to shed light on the issue of violence between co-residents in group homes in a shifting safeguarding environment. This report will discuss how NDIS funding practices and regulatory oversight are significant factors that impact on the occurrence, prevention and response to violence and abuse between co-residents in group homes.

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6. Martin Foley, Minister for Housing, Disability and Ageing (Vic), 'Zero Tolerance of Abuse of People with a Disability: Response to the Inquiry into Abuse in Disability Services' (Ministerial statement, November 2016) <https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Abuse_in_disability_services/Zero_tolerance_of_abuse_of_people_with_a_disability-_Response_to_the_Inquiry_into_Abuse_in_Disability_Services_DwsYrdmg.pdf>.

7. Victorian Government, *Absolutely Everyone: State Disability Plan 2017-2020* (2017) 46 (Action 19).

8. Victorian Government, *Dignity, Respect and Safer Services: Victoria's Disability Abuse Prevention Strategy* (2018).

9. John Chesterman, Deputy Public Advocate (speech delivered at OPA Roundtable, Melbourne, 29 July 2019).

10. For more information, see *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* <https://disability.royalcommission.gov.au>.

Historical and current context

Residential institutions for people with disability were gradually closed from the 1990s because they could not change sufficiently to meet evolving community expectations regarding the treatment of people with disability, which increasingly eschewed their segregation and isolation from the community. Community expectations had significantly changed over the decades since World War II because of an increased political and social emphasis on the universal nature of human rights for minority and disadvantaged groups. During the 1970s and 1980s, several United Nations' declarations relevant to the rights of people with disability were promulgated that emphasised a focus on the integration of people with disability into society as 'normally' as possible. These twin principles of normalisation and integration had a profound influence on Victorian Government policy in the 1980s and 1990s.

The group home (or Community Residential Unit) model was established to facilitate people with disability experiencing a life more akin to other members of the community. The aspiration was to support people to live in smaller community-based accommodation, with appropriate levels of support, increased staff ratios, opportunities for skill development and experiences. While the group home model was at the time considered the leading-edge option for improving the lives of people with disability, leaders in the field now no longer consider it the best option for every resident.

Group homes can exhibit many of the hallmarks of institutions, like the one-size-fits-all approach that suggests that the only possible model is to place people with disability in a shared house situation of five unrelated individuals who have not chosen to live together. Evidence has established that residents of group homes have no choice and control over where or with whom they live. Some homes have a large number of casualised and inexperienced support staff who do not always know residents well, and this can perpetuate cultural factors that contribute to abuse.[11] Akin to changing societal views on large residential institutions, group homes are now seen by many as "inconsistent with true life potential, rights of the person and social inclusion of persons with disability."[12]

However, not all group homes have these characteristics; Community Visitors do see examples of good group homes. One example of a 'good' group home described in the literature was a "service that had a practice framework that included elements such as: active listening; positive language; plan of the day; active support; and choice and control."[13] Well performing homes support the personal development, self-determination, social inclusion, emotional, physical and material wellbeing and rights of residents to achieve positive quality of life outcomes.[14]

Some people prefer to live with others, and in order to realise the promise of choice and control, it is necessary to ensure the availability of good group homes. There are some innovative models emerging, and the development of new and innovative models should be encouraged. This report considers the changes necessary in order to promote the rights and social inclusion of people with disability in group homes.

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11. Independent Advisory Council to the NDIS, *Pathway to contemporary options of housing support,* (2018) 8.

12. Ibid 5.

13. Bigby, C., & Bould, E. (2014) *Guide to visiting and good group homes*. Melbourne: Living with Disability Research Group, La Trobe University, 6.

14. Ibid 1–29.

The rollout of the NDIS from 2013 brought significant reform to the disability sector. The scheme has the potential to transform the design, development and provision of formal disability services and, consequently, the lives of many people with disability across Australia. Designed with a stated intention of maximising choice and control for the 460,000 Australians with disability that will be eligible for the scheme, it brings hope that alternative models of accommodation for people with disability will emerge. However, the practice has not quite lived up to the promise yet, especially for people with complex and challenging support needs.[15]

One of the most noteworthy components of the NDIS reform is the separation of housing from other types of disability support services. The enormity of the task means it will take several years to effect but, once it is complete, daily support providers will not own or provide the home that participants live in.[16] In other words, under the NDIS, Specialist Disability Accommodation (SDA) providers offer the 'bricks and mortar' (i.e. the physical dwelling), whereas Supported Independent Living (SIL) providers provide daily supports within a home. The intention of the separation is to increase the choice and control of participants by allowing them to more readily change either their SDA or SIL provider without having to change the other.

The transfer of State-funded homes to NDIS is in process with nearly 850 group homes having to undergo the changeover. Nonetheless, the policy and legislative context for many of these Victorian group homes changed significantly from 1 July 2019. In the course of the NDIS roll out, DHHS registered its disability housing stock (including group homes) as SDA and has transferred its disability services (i.e. SIL and Short-Term Accommodation Assistance (STAA)) to five non-government providers (i.e. CSOs).[17] Staff in these houses are on secondment from DHHS to their new CSO employer for a transition period. In the *Bilateral agreement between the Commonwealth and Victorian Governments on the NDIS*, signed in early 2019, DHHS homes are deemed 'in kind' arrangements, indicating that they form part of the Victorian Government's non-monetary contribution towards the funding of the NDIS. Participants who were residing in group homes at the time of the transition to the NDIS, namely existing residents in DHHS homes who are eligible to be NDIS participants, are automatically deemed eligible to receive SDA funding to continue living in their current properties.[18]

Because not all group home residents are eligible for the NDIS, and those who are have not yet all transitioned to the scheme, some houses are subject to both State and Commonwealth laws and safeguarding frameworks.

The NDIS has created an entirely new framework of funding and regulation for services for people with disability and this has, and will continue to generate, new forms of disability-specific shared accommodation. These new models of accommodation, some of which include shared living spaces, will be governed by a variety of legislation covering people's services and tenancy rights and protections. OPA is now sorting our way through the new frameworks, identifying the difficulties and confusions that remain to be worked out. In the meantime, new 'group homes' are opening, and, in many cases, only paid staff know what's going on inside them.

The legislative and policy context is set out further in Appendix 1.

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15. Office of the Public Advocate (Victoria), *The Illusion of 'Choice and Control': The difficulties for people with complex and challenging support needs to obtain adequate supports under the NDIS* (2018).

16. Summer Foundation, *Separating housing and support services: A toolkit for providers* (2017).

17. For more information, see Victorian Government, *Transfer of Disability Accommodation and Respite Services* (12 July 2019) <https://www.vic.gov.au/transfer-disability-accommodation-and-respite-services>.

18. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) s 4.11.

Prevalence of violence and abuse in group homes

There are no nationally consistent data sets that describe the prevalence or extent of violence, abuse, and neglect of people with disability. Data must instead be pieced together on the basis of anecdotal evidence provided by people with lived experiences, their families and supporters, as well as from a variety of other sources such as mandatory reporting and investigatory data from within the disability sector. The data presented here should therefore be read as conservative estimates.

OPA is well placed to comment on the prevalence of violence and abuse in institutional and residential settings, stemming from the Public Advocate's statutory role and the reporting role of Community Visitors.

The Community Visitors Program is the largest of OPA's volunteer programs. There are more than 400 volunteers across three streams: disability services, Supported Residential Services (SRS) and mental health. The key role of Community Visitors is the protection and promotion of the human rights of people with disability. In the disability stream, Community Visitors are empowered by the *Disability Act 2006* (Vic) (Disability Act) to make announced and unannounced visits to Victorian accommodation facilities for people with disability[19] to monitor and report on the adequacy of services provided, in the interests of residents.

For the past 30 years, Community Visitors have been reporting on issues identified and findings to the Victorian Parliament in their Annual Report. Since 2009, Community Visitors have been systematically and intensively monitoring and reporting incidents relating to abuse, neglect, and assault in disability residential services. The numbers are ascertained from their viewing of incident reports, incidents they witness, and incidents disclosed to them by residents and staff. They should be taken as a conservative estimate of the prevalence of abuse, neglect and assault in service settings; it is a complex undertaking due to many incidents not being recorded, witnessed or disclosed for a variety of reasons. Residents may be unable to report what has happened or they may not perceive what has happened to them as abuse due to previous experiences. There may be a culture of secrecy around abuse or concern that reporting will lead to a loss of services or eviction for the person. Nonetheless, reporting of abuse matters by Community Visitors remains one of the most important aspects of their role.

In 2018-2019, Community Visitors from the disability services stream completed 2952 visits to 1148 disability residential services. A total of 170 issues of abuse and neglect were recorded by Community Visitors with 18 notifications made to the Public Advocate regarding the most serious instances. Nearly half of all serious incidents in disability group homes reported by Community Visitors each year relate to violence between co-residents. These include multiple instances of residents reporting that they are fearful in their own home and that they often choose to stay in their rooms rather than interact in shared living spaces. Staff-to-resident abuse is also concerning, and represents the second most frequently reported type of incident.

The graph below illustrates the number of reports of abuse, violence, and neglect made by Community Visitors following their regular visits to disability residential services since 2011. There is a noticeable increase in the number of incidents recorded over the years, which may in part be due to improved incident recording practices, but nevertheless points to an alarming and rising prevalence rate.

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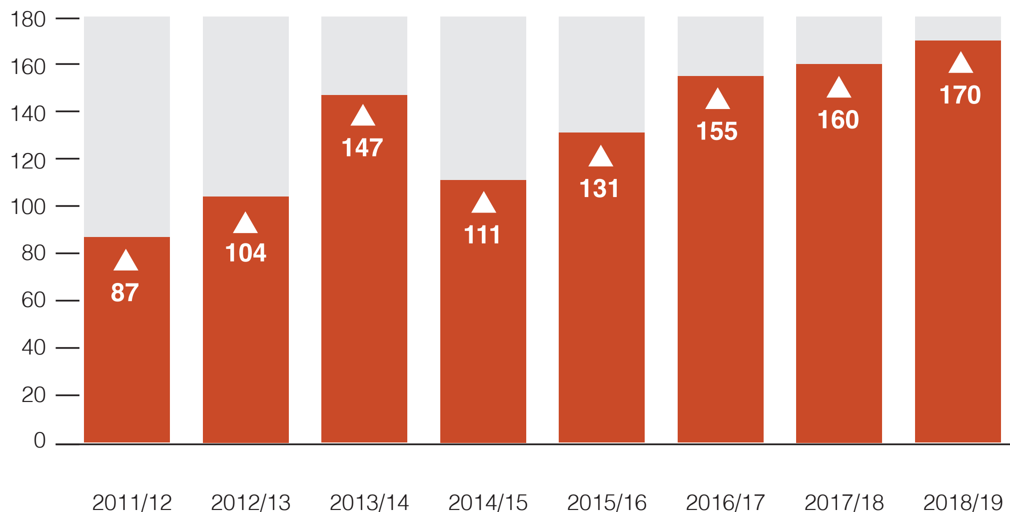
19. Community Visitors also make visits to 24-hour mental health settings (under the *Mental Health Act 2014*) and Supported Residential Services (under the *Supported Residential Services (Private Proprietors) Act 2010*). The data provided in this report is limited to the disability services stream of the program and does not include reports from Community Visitors from mental health and SRS settings.



Issues of abuse, violence, and neglect identified in the Disability Services stream of the Community Visitors Program, 2011-2019

Following a substantial increase in abuse and violence reported by Community Visitors in the 2009-2010 financial year, the Public Advocate required all program areas within OPA to notify her of matters concerning sexual assault, serious abuse, or unexplained injury. 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. Since the process of notifications to the Public Advocate was introduced in 2010-11 to the end of the last financial year (i.e. nine years), Community Visitors from the disability services stream have made a total of 157 notifications. One example is provided below.

Case story 1: Notification from Community Visitors to the Public Advocate[20]

A four-bedroom group home had only one resident as the other residents moved out in the previous 12 to 18 months due to his aggression.

The resident had autism, mild intellectual disability and severe anxiety plus a history of severely challenging behaviours. When Community Visitors visited, they found the house in 'lock-down' as the resident's behaviour had escalated. The sole worker had locked herself in the office as two other staff had been assaulted that day. She informed Community Visitors that the arrival of police and ambulance was imminent.

Mechanical and chemical restraint was needed when emergency services attended the house to take the resident to hospital. Staff reported that the resident's behaviour deteriorated despite the efforts of a number of agencies involved. The reliance on frequent intervention by emergency services was unsustainable and likely to contribute to the resident's acute levels of distress and trauma. There was a lack of clarity regarding the resident's mental health status, with differing diagnoses from two mental health services.

The constant exposure to challenging behaviours took its toll on the support team which further compromised support. DHHS planned to move the resident to a purpose-built house, arguing there would be greater flexibility around staffing and transport as a bus was based at the house.

20. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2017-2018*, 57.

In 2017, as part of the Victorian Government's commitment to a zero-tolerance initiative, the Community Visitors Program obtained additional funding to develop and implement a protocol for the referral of abuse and neglect issues to the Victorian Disability Services Commissioner. In the last financial year alone, 133 referrals were made, a 30 per cent increase from the 105 referrals made in the previous year. The table below shows that abuse between residents – whether physical, sexual, or emotional – is strikingly recurrent.

Breakdown of issues included in referrals from the Disability Services stream of the Community Visitors Program to the Disability Services Commissioner, 2018-2019

Primary abuse allegation	Number
Physical assault – resident-to-resident	43
Physical assault – resident-to-staff	29
Physical assault – staff-to-resident	8
Physical assault – resident-to-outsider and vice versa	11
Sexual assault – resident-to-resident	4
Sexual assault – staff-to-resident	1
Sexual assault – resident-to-other/other-to-resident	5
Verbal/psychological/emotional abuse – resident-to-resident	36
Verbal/psychological/emotional abuse – resident-to-staff	24
Verbal/psychological/emotional abuse – staff-to-resident	8
Verbal/psychological/emotional abuse – resident-to-outsider and vice versa	14
Neglect – staff-to-resident	25
Financial abuse / exploitation	2

Across both escalation pathways (i.e. notifications to the Public Advocate and referrals to the Disability Services Commissioner), resident-to-resident violence consistently represents the type of violence or abuse that is most frequently recorded by Community Visitors.

Notwithstanding the gaps and limitations in the data, other sources corroborate Community Visitors' data and provide further evidence that violence and abuse between co-residents in shared supported accommodation is common:

- Ten per cent of the 1041 incidents reported to the Victorian Disability Services Commissioner in 2017-2018 related to allegations of physical or sexual assault or abuse between co-residents in disability services.[21]
- A NSW report found that resident-to-resident assault accounted for 44 per cent of all injuries in residential care.[22]

The ubiquity of the problem was confirmed in consultations with self-advocates held in the context of this project. Disturbingly, while self-advocates were not recruited on the basis of having experienced violence, neglect or abuse, it transpired that every one of them had directly experienced or frequently witnessed co-resident violence and abuse in the homes where they live or lived. Some were being subjected to ongoing abuse at the time of consultation. Most had felt scared in their homes, with some currently experiencing fear when they are home. Their lack of surprise at the scale of the problem was indicative of how normalised violence and abuse in this context has become.

Quotes from self-advocates on their experience of violence and abuse in group homes

"[There is] only one person [in my home] who gets along with me and speaks to me nicely. The others don't. That's out of the five of us… The others come to me and say they want to break my computer or punch me. They yell and swear at me a lot… I get called a lot of names that are not nice.""I've been abused by a resident. He says all these nasty things to me. It still happens. I'm very scared of him. This is someone I [currently] live with.""We have a resident who is [quite old] and she starts yelling and swearing… It happens every day at my house."

"Every day he swears at me and does this [holds up a fist]."

"This guy does the same thing over and over and over. I asked the CVs [Community Visitors] if he can be moved out. I'm quite scared to go in my own house."

"A lady at my house picks on me and does threats."

"Sometimes there's lots of fighting. It's stressful for me because they swear a lot."

This anecdotal material suggests a much higher rate of violence in group homes than the figures suggest. These quotes from self-advocates point to instances of verbal abuse, which possibly do not get rated by service providers as a serious incident or even minor incidents, despite clearly being very distressing. There is no doubt that such endemic levels of violence and abuse would not be tolerated in other contexts.

21. Calculated from figures reported in Disability Services Commissioner (Victoria), *2018 Annual Report*, (2018) 17-18.

22. Community Services Commission and Intellectual Disability Rights Services, 'Crime Prevention in Residential Services for People with Disabilities' (2001), cited in DLA Piper, *Background Paper on Access to Justice for People with Disability in the Criminal Justice System* (2013) 81.

This project

The objectives of this project were to identify evidence-based and effective ways of preventing and responding to violence and abuse between co-residents by:

- considering the causes of violence and abuse between co-residents, and potential means of addressing these, including by:
    - ensuring choice and control
    - culture change
    - addressing workforce challenges
- exploring the effectiveness of existing laws and policies applying to violence and abuse in group homes
- considering how the safety and rights of all residents can be protected, without driving perpetrators or victims into inappropriate accommodation, homelessness or jail
- considering the role of disability services in responding to violence and abuse between co-residents in group homes
- considering the relevance and application of family violence laws in this context.

The project involved consultation with the groups mentioned below and the report is designed to incorporate their views.

The voices of people with lived experience

Providing a platform for the voices of people with lived experience was central to the project's aims. OPA developed this report in consultation with six group home residents with cognitive disability (from here on in, the report will refer to them as self-advocates). The purpose was to better understand the lived experience of being subjected to and witnessing violence and abuse in these settings, to learn more about how (they perceive) the current response to violence and abuse, and to seek their ideas for effective solutions.

Six self-advocates of mixed ages and genders were recruited and supported at the consultation sessions run by VALID. Information about the project and the discussion questions during the sessions were all presented in an easy read format (example at Appendix 2). The self-advocates provided written consent for their contributions to be used by OPA in this report and in future systemic advocacy.

In June 2019, OPA conducted an in-depth consultation over two days with the group of six self-advocates. A second and final consultation was conducted with the six self-advocates to seek their views on the proposals generated at the roundtable (described below).

The lived experiences reported here all occurred before July 2019 and so the policy and legal contexts that applied at that time are referred to in this report to provide context to those experiences. Post-July changes, and potential implications of those changes, are mentioned where they are relevant.

Sam's story

At the start and throughout this report is Sam's story. Sam is one of OPA's guardianship clients[23] who has lived experience of resident-to-resident violence in a group home. His story illustrates and gives life to many of the issues discussed in this report.

23. For confidentiality purposes, the story has been de-identified, including by using a fictitious name.

OPA's Community Visitors

OPA's Community Visitors are a critical safeguard for Victorians residing in disability accommodation. Through their annual report findings, they have and continue to play a key role in seeking to resolve the harm that is occurring to residents in group homes, as well as in raising public awareness of the abuse and neglect that occurs in disability residential services. Their findings and various case stories, as published in recent annual reports, are included throughout this report to complement the information gathered at the consultations.

Policy and practice leaders

In July 2019, following the first consultation with self-advocates, OPA brought together policy and practice leaders for a roundtable discussion to develop a shared understanding of the issues associated with violence and abuse between co-residents in group homes, identify best practice responses, and build a shared commitment to possible solutions.

Along with one self-advocate from the consultation, the roundtable participants included representatives from:

- disability self-advocacy groups
- legal services specialising in supporting people with disability
- disability service providers and their peak body, National Disability Services
- the Disability Services Commissioner
- the Residential Tenancies Commissioner
- Victoria Police
- the Department of Health and Human Services
- Consumer Affairs Victoria
- the Centre for Innovative Justice
- the Office of the Public Advocate.

A representative from the National Disability Insurance Agency (NDIA) was invited but did not attend.

Prior to the roundtable, a background briefing paper was distributed to all participants. On the day, the self-advocate co-presented the information from the lived experience consultation, followed by presentations from a disability service provider, Victoria Police and OPA. The roundtable proceedings then included whole group discussions facilitated by the Public Advocate, as well as small group discussions that focussed on identifying practical solutions to the problem of violence and abuse between group home co-residents.

The report reflects discussions from the roundtable and incorporates references to additional sources of information, all of which are referenced. The roundtable was subject to the Chatham house rule, whereby participants consented to the information being reported with the specific contributor/s of each comment or idea not being identified.

Structure of this report

Section 2 of the report considers the context and causes of violence and abuse in group home settings.

Sections 3 to 7 document views from the consultations with self-advocates and policy leaders, as well as the views of OPA and Community Visitors. The report presents five key aspects of the issue of resident-to-resident violence in group homes:

- choice and control in accommodation
- workforce
- responding to and reporting allegations of violence and abuse
- relocation and eviction of residents
- justice system responses.

Finally, informed by the roundtable and lived experience feedback, the report makes 38 key recommendations which OPA believes will help prevent and provide more appropriate responses to violence and abuse between group home co-residents.

2. Understanding violence and abuse between group home co-residents

A large body of literature identifies the variety of factors that can contribute to violence and abuse by people with disability in shared accommodation settings.

Individual and personal risk factors include past experiences of violence and trauma, difficulties regulating emotions and impulsivity, and limited opportunities to build social and interpersonal skills. Consultations with self-advocates similarly identified a wide range of reasons explaining why some residents might hurt other people.

Quotes from self-advocates in response to the question "Why do some residents hurt other people?"

"Maybe something in their upbringing, depends on how they were treated when they were a child."

"They may not have family who can help them. They get upset if they don't have support around them."

"If they have a mental problem sometimes, they don't take their tablets."

"It's because of their disability. They don't know what they're doing."

"[When he's] taken out for a one-on-one with a staff member, he's good. But as soon as he gets through the front door, he slams the door and we hear him hitting the bedroom walls. He's fine when he goes out the front door but coming back into the house when we're there, he comes back pretty angry. The kitchen door has a glass window and it's been broken twice, there's been huge holes in his bedroom walls. He likes talking to me and getting along with us, but because the other two are arguing a lot, I wonder if it's because he's coming back when they're arguing and [he's] just losing his temper?... I think it might be a medical issue, or it's a behaviour problem."

"People might watch too many violent films."

There is, however, a widespread understanding that a person's vulnerability to abuse results from a combination of individual, social, and systemic risk factors.

Based on its unique experience and data from its program areas, including the Community Visitors Program, OPA has identified some systemic risk factors that contribute to violence and abuse within disability services:

- social exclusion of people with disability and limited opportunities for positive social and community participation
- the group home environment when there are inappropriate placements and a lack of alternative accommodation to give effect to choice and control
- workforce issues such as lack of training of staff in disability residential settings, insufficient staff, high numbers of casualised staff and lack of leadership
- cultural issues within disability services, such as acceptance and normalisation of violence and bullying.

Traditionally at least, violence and abuse between co-residents with disability rarely resulted in the sort of proactive, protective responses which is now expected in cases of family violence. In fact, violent behaviour perpetrated by and towards persons with disability is not always labelled as violence. It is instead often dismissed as 'behaviours of concern' or put down to 'resident incompatibility.' Past inquiries and reports document "disturbing evidence of systemic weaknesses and failures of existing safeguards in disability services."[24] The 2016 Victorian Parliamentary Inquiry into abuse in disability settings found that

> "Normalisation of abuse is a fundamental barrier to identifying, reporting and investigating abuse appropriately – this is a systemic issue that requires significant cultural change on the part of [DHHS], service providers and the criminal justice system."[25]

Further research presented in a recent report by the Victorian Disability Services Commissioner, entitled Building safe and respectful cultures in disability services for people with disability, found that service users often had minor worries or concerns that they felt were not sufficient to warrant triggering an official complaints process for fear that this might jeopardise service provision. However, it later eventuated that those same settings were found to be abusive and thus worthy of concern.

A strong emerging theme among self-advocates was a sense of disempowerment and helplessness at the situation. Some self-advocates currently impacted by violence or abuse were at a loss as to how to deal with the situation. It appeared that the sense of helplessness which many self-advocates felt about the problem had been fuelled by years of inattention or inadequate responses from those who have/had the power and responsibility to address the problem.

OPA has argued for many years that violence between residents in group homes should be recognised as violence and not diminished though euphemistic terms. To suggest that people with disability should expect a different response to other members of the community experiencing violence in their homes merely reinforces the view that group homes are not actually home-like environments.

Quotes from self-advocates on the challenges of self-advocacy in response to violence and abuse

"Someone said that they wanted to break my computer. I don't know how to deal with the situation."

"When people get bullied, they are too frightened to speak up for themselves. They're very scared and it's not their fault."

"You're too scared to call the police when you're being bullied."

"It shouldn't happen. [You] should have a right to stick up for yourself… What are you supposed to do? There's no answer to that, is there?"

24. Department of Health and Human Services (Vic), *Dignity, Respect and Safer Services: Victoria's Disability Abuse Prevention Strategy* (2018) 2.

25. Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Settings* (2016) 61.

3. Choice and control in accommodation

Why it matters?

In its 2015 inquiry, the Senate Community Affairs References Committee found that "institutional and congregate care models of service delivery are themselves major factors in the prevalence of violence, abuse and neglect of people with disability."[26] The committee also discussed how resident incompatibility and inappropriate placements are often driven by service efficiencies and insufficient appropriate accommodation options.[27] In evidence given to the inquiry, VALID stated that:

> "Severe underfunding by governments and underinvestment in appropriate housing creates a context where many individuals are required to live in group accommodation with other residents who make their lives unsafe, miserable and intolerable. That this is tolerated as an acceptable solution to accommodation and support is a form of systemic abuse that would not be acceptable to any other citizens."[28]

The committee's recommendations included the following:

- "The committee recommends the Australian Government work with State and Territory Governments to consider the principle that there should be no enforced shared accommodation for people with disability.
- The committee encourages increased resources for public and social housing for people with disability, including models where people with disability may choose to cohabitate with other people with a disability or abled people. The goal being to achieve a move away from institutions and forced congregate housing models."[29]

Do people with disability have choice and control over where they live?

Type of build and location

The NDIS will support an impressive number of Australians with disability but, in practice, the vast majority of participants will not be eligible for SDA. Only approximately six per cent of all NDIS participants will receive funding for SDA, that is those who "require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs."[30] An eligible participant can take their SDA funding (in conjunction with their own reasonable rent contribution[31]) to the SDA market and use it to pay for an SDA property. The NDIA maintains a register of all SDA properties but does not publish SDA vacancies.

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26. Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Violence, Abuse and Neglect against People with Disabilities in Institutional and Residential Settings* (2015) 223.

27. Ibid 217.

28. Evidence to Senate Community Affairs References Committee, Melbourne, 30 June 2015, 44 (Mr David Craig, Project Coordinator, VALID).

29. Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Violence, Abuse and Neglect against People with Disabilities in Institutional and Residential Settings* (2015) xxii (recs 20 and 21).

30. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) r 1.2.

31. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) r 5.7.

In Victoria, existing group home residents who became NDIS participants were automatically deemed eligible to receive SDA funding to continue living in their current properties.

It was evident from self-advocates that, notwithstanding the intention of the NDIS, genuine choice and control about accommodation – both the type of build and the specific property – is still uncommon for group home residents. While some self-advocates identified that it had been their choice to move into their current property, they acknowledged that they had typically not been shown or offered any other options before making that choice. Some appeared surprised to learn during the consultations that living by themselves or in an alternative supportive arrangement of their choosing were even options. They did not expect to have much control in decisions about accommodation, with one self-advocate who wished to move stating that it was "up to management."

Despite the promise that "under the NDIS, more people with disability will be able to live their life, their way, with more choice over who works in their home, what home they live in and who they live with",[32] the introduction of SDA funding does not signal the end of congregate living arrangements for people with disability.

Quotes from self-advocates on choice and control over accommodation decisions

"They just said we're moving you here… They just moved us to the new house. They said we're going to put you there. DHHS… had a meeting with our parents and everyone and decided that they would put us four together because they thought we might get along there. [Were you at that meeting?] I got told the meeting was just between staff and parents only, and we were told we couldn't come out of our bedrooms. [How old were you at the time?] I was about 18 to 25."

"I live in a residential place. I used to live in an old aged care place where I got bashed. [Did you get to look at other houses?] No, just one house."

"I used to be in respite. My case manager organised [my accommodation] for me."

"People with disabilities have it easy because DHHS helps you to move house. 'Normal' people find it really hard to move house… I put the application in [to move house], so it's up to management when it happens… I told the Community Visitors that I wanted to move as well."

"What if you want a staff carer to sleep overnight, but live by yourself. Can you do that?"

"I lived by myself once, but I got very frightened."

"You should be able to decide where you live."

"It should be a choice."

32. Victoria, Parliamentary Debates, Legislative Assembly, 25 July 2018, 2346 (Martin Foley, Minister for Housing, Disability and Ageing).

A person is eligible for SDA if they meet the SDA assessment criteria which are set out in the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth).[33] The rules also govern how the CEO of the NDIA must determine which design category, building type, and location would be appropriate for any eligible participant.[34]

Determinations about the appropriate design category are linked to physical and behaviour management related needs and therefore are more clearly objective. By comparison, determinations about building type appear less so. Building types include apartments, duplexes/villas/townhouses, houses, group homes and larger dwellings (which are legacy stock).[35] According to the rules, the participant's goals and preferences are one of several factors that needs to be considered in the decision. Consideration is also given to the most appropriate support model and "whether the building type would represent value for money in that the costs would be reasonable, relative to both the benefits achieved and the cost of alternatives."[36] For example, rule 4.7(a) states that "if the participant requires constant person to person supports and cannot be left alone for periods of time, the most appropriate support model may be shared onsite support." While the rules do state that new build SDA will be capped at five residents in a single home (unless it is for a family),[37] over 100 homes forming DHHS' legacy stock can and will continue to accommodate more. This highlights the tension between participant aspirations and considerations of cost in NDIA decision-making.

In 2019, as part of a suite of changes to build confidence in the SDA market, the NDIA set up the SDA panel.[38] While there are few official published references to the panel, OPA understands that it is an assessment panel tasked with making the final decisions on SDA eligibility, design, type and location, during the creation or review of an NDIS plan. It is intended to fast track SDA assessments for particular categories of participant, including, for example, young people in nursing homes who are looking to move.[39] OPA understands that this is a paper-based assessment and that the panel does not meet with participants. Thus, while the establishment of the panel is likely to enhance consistency in decisions about SDA for NDIS participants, the SDA Rules and panel can still act to limit the weight given to participant preferences and goals, especially if they seek to live alone.

When the NDIA released its *Specialist Disability Accommodation Provider and Investor Brief* in April 2018, concerns were raised that it "expresses a vision for SDA housing with a clear bias toward shared models of housing for people with disability."[40] This is because it states that only a very small number of SDA eligible participants[41] (i.e. a very small proportion of the six per cent of NDIS participants eligible for SDA) will receive sufficient SDA funding for a single resident dwelling.

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33. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) rs 3.4-3.8.

34. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) Pt 4.

35. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) r 4.5.

36. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) r 4.6.

37. *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) r 6.10(b).

38. Stuart Robert, 'Housing Options for People with Disability are Increasing Under the NDIS' (Media Release, 15 August 2019).

39. Community Affairs Estimates Committee, Commonwealth of Australia, 'Update: Younger People in Residential Aged Care' (2018-19 Additional Estimates, 21 February 2019).

40. Australian Federation of Disability Organisations, Summer Foundation, People with Disability Australia and YoungCare, *Joint Statement on the NDIA's Specialist Disability Accommodation provider and Investor Brief* (2018).

41. National Disability Insurance Agency, *Specialist Disability Accommodation: Provider and Investor Brief* (2018) 9.

According to a joint statement by disability advocacy groups released in response to the brief:

> "Forcing participants into shared accommodation arrangements, in order for the NDIA to reduce costs, is a position out of step with the expressed preferences and goals of people with disability, let alone Australia's human rights obligations, the NDIS Act, NDIA's Independent Advisory Council advice on an ordinary life, the COAG vision for SDA and findings of international and Australian research. It is also a significant risk to the safety of people with disabilities as evidenced by inquiries into abuse and neglect, which have shown that people living in group homes are at high risk of violence and abuse."[42]

The joint statement called on the government and NDIA to "confirm that where participants have a goal of living alone, the NDIA will not force people with disability into shared living arrangements; [and] that participants will have choice and control to live in a single resident dwelling, as considered reasonable and necessary to achieve their goals."[43] This reflects Australia's obligation under the United Nation's *Convention on the Rights of Persons with Disabilities* (UN Convention) to ensure that "persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."[44]

The detail in the rules governing decisions relating to a participant's SDA, demonstrate that the perceived cost-savings of shared living arrangements (especially for people with round the clock support needs) continues to play a deciding role in NDIA decision-making, despite obligations under the UN Convention. The commitment to financial sustainability could, in some cases, be justified but goes against evidence of significant reductions in staff costs in more personalised arrangements.[45]

The impact of thin markets

Thin markets in the NDIS are described as inadequate service availability resulting in participants' needs not being met.[46] Participants and organisations in the sector, as well as the State, Territory and Australian Governments, have acknowledged that there is a critical shortage of disability accommodation options in the NDIS market. This means that even when SDA funds are allocated in an NDIS plan, a participant may not be able to source an SDA on which to spend those funds. It is fair to say that the NDIS is not yet delivering on the promise of providing participants with choice and control over where they live.

In the absence of long-term accommodation, some NDIS participants cycle through a succession of unsustainable, short-term arrangements. In some cases, Community Visitors observe SDA eligible participants seeking accommodation outside of the NDIS market, for example in SRS or public housing, as Sam did. Safety comes at a cost, and for some participants the cost is a real risk of losing SDA funding if the funding allocated to it has not been spent at the time of their plan review. At its worst, the SDA shortage has left a number of participants to wait in unnecessary detention within the criminal justice or mental health systems or has thrust participants into homelessness. In this way, the SDA thin market has far-reaching systemic impacts as it imposes unnecessary strains on adjacent sectors.

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42. Australian Federation of Disability Organisations, above n 40.

43. Ibid.

44. *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 19(a).

45. Curreyer, B., Stancliffe, R and Dew, A, Self-determination: adults with intellectual disability and their family, *Journal of intellectual and development disability* (2015) 40:394-399

46. https://engage.dss.gov.au/ndis-thin-markets-project/

The fundamental shift in the delivery of disability residential services has not been executed with the market interventions necessary to guarantee the supply of willing SDA providers meets the demand. One of the greatest losses from the NDIS reform is the fading of a duty of care of government to provide accommodation to people with disability who need it. The Disability Act attributed a clear vacancy management role to the State Government and a responsibility on service providers to collaborate with DHHS when accommodation relocation or eviction issues arose. In the NDIS environment, there is a similar, albeit weaker, obligation on SDA providers to collaborate with the NDIA, but the relationship between funder and service provider is complicated by the individualised funding model and the marketisation of the sector gives providers more liberty (e.g. to refuse service provision even when a participant is in crisis). The NDIA has not yet cemented or operationalised its commitment to affording all participants with continuity in accommodation.

Case Story 2 from Community Visitors[47]

Tensions between two residents sharing a group home boiled over and a resident with significant anxiety, autism and schizophrenia was admitted to hospital after an assault by a fellow resident.

He remained in a mental health unit for seven weeks. He wanted to return home but not if the resident who had assaulted him and three staff members remained there.

An NDIS plan review for the resident took months. Eventually, it was accepted that he should move, however, the NDIA said that it could not fund housing. Meanwhile, DHHS said that, in an NDIS environment, it was not its responsibility to rehouse the co-resident.

To facilitate his discharge from hospital, NDIS funding was utilised for temporary accommodation for the assault victim, however, this reduced the amount available to him for other purposes.

Choice of co-residents

Harmony between residents in houses is essential to resident wellbeing and is often underpinned by careful consideration of vacancy management and long-term consistent staffing arrangements. When these practices are not in place, it can result in disturbances, stress, anxiety and marginalisation for residents. Community Visitors report that one of the main risk factors for violence and abuse in disability residential services is incompatible people being forced to live together in group homes. For many people with disability, the right to choose where they live and who they live with is so constrained that they are left feeling unsafe and fearful in their own homes.

47. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2017-2018*, 55.

Case Story 3 from Community Visitors[48]

A new resident was moved into a house with no introductory visits beforehand. She had no day placement organised despite this being in her transition plan.

Within days, she began to abuse the other three residents who were frail and in their 50s. This mid-20s woman physically fought the residents and staff. She was eventually removed from the house by police after assaulting paramedics who were called to the house.

When Community Visitors visited a few months later, DHHS had still not provided counselling for residents. One resident was so traumatised she would toilet in her room rather than risk an encounter with other residents.

The process of matching and introducing a new resident to the house had been mismanaged. The failure to provide counselling to the residents has impacted on residents' health and wellbeing.

Some self-advocates further noted that the design and layout of their group home meant that they did not have private facilities or appropriate safe spaces to be able to get away from other residents who were being abusive or causing other problems. In some cases, people confined themselves to, or were advised to remain in limited parts of the home as a way of dealing with frightening or dangerous situations.

Quotes from self-advocates on the limitations of the group home environment

"Having your own space is important."

"Some bedrooms are close to each other at the back of the house. We have to share bathrooms. If he had his own area for his own dirty habits it might make it a bit safer for me."

"… the other two residents [were] getting louder and louder, just yelling at each other, which was starting to scare me a bit. I was sent for breakfast on my own in the front lounge."

"I lock my room every night now [after being hurt last week]. I'm too scared to come out of my room now."

Vacancy management process

The DHHS vacancy management teams that operated before the NDIS remain in place despite Victoria having fully transitioned to the NDIS. While they do not have the powers they used to, they retain some of their previous value. These teams play a part in advertising through the Housing Hub portal and administering vacancies in all SDA owned by DHHS. Private SDA providers run their own vacancy management processes. This means there no longer exists a 'one stop shop' for vacancy management, making it more difficult for participants to independently navigate the market.

48. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 34.

Community Visitors have noticed a drastic transformation of the vacancy management process in the transition to the NDIS. The new vacancy management and coordination process under the NDIS involves advertising opportunities on websites, including the Housing Hub, one of the more popular advertising websites. Community Visitors note that while the Housing Hub acts as a clearing house, it does not verify vacancies and consequently, some of the advertisements may appear to be for SDA properties when in reality they are not. Vacancies that have been filled often remain on the Hub for extended periods of time, giving a false sense of how many vacancies actually exist. When a participant is successful in identifying a vacancy, they follow-up with an open house visit and applications to the relevant SDA and SIL service providers. Residents have reported to Community Visitors that they face difficulties using the Housing Hub portal. The result is that, despite the existence of several long-standing vacancies in excellent facilities, some residents continue to live in unsafe and inappropriate environments because they are unable to identify or locate a vacancy that is better-suited to their needs.

There are reports that, while this vacancy management and advertising system is intended to create choice for all residents, existing residents are not always consulted on applications made by incoming tenants and compatibility with existing residents has not always been considered by the providers managing the vacancies. Community Visitors are concerned that this process has the potential for SDA providers to prioritise tenants who do not have high-support needs or complex behaviours over those that do.

Case Story 4 from Community Visitors[49]

Community Visitors highlighted the incompatibility of two residents with particularly challenging behaviours who were each moved to a vacant group home. This move was to be into two separate units within the house and, although a partition door was subsequently installed, frequent altercations became the norm as the two residents were required to share bathroom and living areas.

Verbal abuse became normal, lasting sometimes for several hours, unprovoked and occurring even when the targeted resident is not in the vicinity but can be heard throughout the house. Physical assault, slamming doors, hitting and biting occurs regularly and sometimes the targeted resident will retaliate. On one occasion, police responded to a complaint of fighting; staff tried to explain the situation though this was difficult as the resident was in tears and kept telling the officers he was poorly treated.

Although staff have tried a variety of behavioural support strategies in conjunction with prescribed changes to medication, the resident who has been abusive has been waiting for an assessment with a Behaviour Support Specialist for several months. The service provider eventually sought alternate behaviour support assessment services via a support coordinator, however, the assessment is not yet finalised. Following protracted negotiations with DHHS, the service provider will undertake renovations to create two separate bathrooms.

The residents have told Community Visitors they do not want to live with each other, however, due to the complexities of the NDIS planning process, both residents are being denied the right to live in a place where they feel safe and happy.

49. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 25.

Self-advocates felt an almost complete lack of choice and control over new residents moving into their homes. While some did not want to live by themselves, all except one said that people should be able to live by themselves if they want to and that everyone should have the choice of how many people they live with and who those people are. One person had experienced a process of visiting and spending a short time getting to know her prospective co-residents before she moved in, but mostly, people were not consulted at all and were simply notified that a new resident would be moving in. They were unanimous that residents should be able to choose who moves into their home.

Quotes from self-advocates on choice and control of new residents moving into a group home

“[It] just happened, they just sent him over to us… They asked our supervisor, ‘Can we stick him in my house?’ We didn’t get a say in it… They didn’t bother asking us residents. I wasn’t too impressed with that. The new resident moved in a week after our other resident died. I have a photo of him and I can hardly look at it.” [in tears, still grieving]

“We were told we were getting a new guy… The house supervisor told us that a nice guy was moving in…”

“If there’s someone moving in, and there’s already residents there, they should at least give us the decision about did we want him to join us at our house. Not just throw us all together. We didn’t know who was coming in or what their name was or where they were coming from.”

“It should be our choice who moves in.”

Sam

Sam was vocal about his preferred general location, justified by wanting to remain close to Julie and her family and regaining employment with his previous employer. It took nearly two years to find accommodation in his preferred location, during which time Sam moved through a number of accommodation settings.

He was placed in an SRS and other group homes without any weight given to whether he wished to share a home with other people and no consultation on whether he felt his co-residents were appropriate people for him to share a home with. While the clinical recommendation was that he be supported to live with one or two other residents, the SDA market was not sufficiently developed to offer an SDA residence that met this and other criteria of his. This thin market resulted in Sam living in a non-SDA placement. In other words, Sam had to forfeit SDA funding for which he was eligible to give effect to his preferences, which ultimately, the OPA delegated guardian felt would lead to the best outcomes for him.

Case Story 5 from Community Visitors[50]

A resident applied and was accepted for a vacancy in a group home. Three days prior to the move, with the removalist booked and their family preparing the room, DHHS rescinded the offer because the approved SDA funding level of improved liveability did not match the high physical support needs funding required for the house. This was despite the prospective resident having significant vision impairment and mobility issues. The family and the provider were aggrieved that the offer was retracted just before the resident moved and queried the level of SDA funding allocated given the resident's high-support needs.

The resident has an OPA guardian who is continuing to advocate on these issues.

What needs to change?

It was clear from consultations with both self-advocates and policy and practice leaders that the time is ripe to consider whether putting strangers with different needs together under one roof is an inherently unsafe model of support. The NDIS reform provides an opportunity to promote other individual and alternative models of accommodation so that people with disability can have genuine choice about where they live.

Genuine person-centred planning

Economic efficiency may be driving the practices of SDA providers, which impact on quality of life in group homes. However, no progress will be made in relation to the system's issues until it is recognised that, as stated by one roundtable participant, "the currency is the potential of the individual, not the capacity of the provider to make money."

Current research by the Summer Foundation has found that group living is not cost-effective when compared to more individualised options that promote the increased independence of the individual through the use of more flexible support options and the use of assistive technology.[51]

In the marketisation of the sector, providers increasingly feel pressured to increase economic efficiencies to maximise resources.[52] For example, the prices set by the NDIA for SDA group homes range from $5,788-$19,537 per person, depending on the building type/design category. SDA residents with complex behavioural and/or physical support needs obtain more SDA funding in their NDIS plans; it is possible that this pricing structure will drive SDA providers wishing to maximise their income to increase the number of people with complex support needs living within the one home, thus diversifying the overall array and complexity of support needs in the home. This has the potential to impact the quality of life for all residents, as it is known that time and resourcing constraints make it harder for staff and managers to dedicate time to creating a safe and respectful culture within the house.[53]

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50. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 41.

51. Summer Foundation, *Joint Standing Committee on the NDIS Inquiry into Supported Independent Living*, (2019) Appendix B, 4.

52. Robinson, S., Oakes, P., Murphy, M., Codognotto, M., Ferguson, P., Lee, F., Ward-Boas, W., Nicks, J. & Theodoropoulos, D. (2019) *Building safe and respectful cultures in disability services for people with disability: Report.* Victoria, Disability Services Commissioner.

53. Ibid.

Everyone has the right to make decisions about matters that affect their lives. While there may be both pros and cons to shared living, the decision to live in a group home must be an informed choice for each individual. Despite the NDIS' clear focus on choice and control for participants and the ability of SDA funding to be portable from one provider to another, the NDIA's assessment of what is 'reasonable and necessary' and represents 'value for money' can significantly constrain the degree of choice and control given to participants over their supports in practice, particularly when it comes to accommodation. Greater legislative clarity is required in the NDIS Act and SDA Rules to resolve the tension between participant choice and control and what is reasonable and necessary.

NDIS planners and Local Area Coordinators (LACs) have the opportunity to give effect to a participant's choice and control, but this requires a commitment to embedding shared decision-making in planning practices. If participants are to feel and be safe in the services they use, their priorities, preferences, and perspectives need to carry weight in planning meetings.[54] To achieve this, planning processes need to be properly resourced and the NDIA needs to move from a rules-based culture, where funding decisions are based on generic principles or rules, to an outcomes-based culture, where funding is determined and supports provided according to outcomes for the individual. The Complex Support Needs Pathway is improving the processes for people who are able to access it, however, there needs to be greater emphasis on person-centred planning across the board so that all people can be supported to live in the housing arrangements and community of their choice.

Build the capacity of NDIS participants

Many people with disability are not used to exercising choice because they have so often been denied the opportunity to do so. It is essential to invest more in individuals because, as a person grows stronger, their capacity to make and express choices and stand up to violence too, grows. Improvement of the processes whereby people with disability can express and make choices, or be supported to do so, and genuinely influence NDIS planning decisions and outcomes is necessary. This will require individual capacity-building, supported decision-making processes, advocacy support (both legal and non-legal) and safeguards. It will also be necessary to build the capacity of frontline staff to pre-emptively identify when residents feel unsafe in their homes and respond with the appropriate supports.[55]

People with disability should be given more control over who they employ to deliver their NDIS supports. Again, participants need to be supported to navigate the very new and unfamiliar NDIS market. This can be facilitated through the Complex Supports Needs Pathway and specialist support coordination, which, at this stage in the transition, is of variable quality. Research is required to identify what constitutes good support coordination, how to ensure all people who need it can receive it, and the number of support coordinators required to meet demand. To avoid conflicts of interest and the undue influence of participant's freedom of choice, support coordination should be independent of the provision of other disability support providers, especially SIL and SDA supports. In other words, organisations that provide other disability supports should not also provide support coordination under the one plan. It is understood that the NDIA will soon publish a draft guide to support coordination for consultation, which will hopefully provide an opportunity to address these matters.

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54. Ibid.

55. Ibid.

Centralise vacancy management

There is no evidence that new providers are given guidance as to what effective tenancy management looks like and whether it is intended to encompass vacancy management practices. More relevantly, there is no standard against which their practice can be held. The NDIS Quality and Safeguards Commission has begun developing guidance materials for SDA providers. This guidance should be informed by good practice norms in this area and specifically cover expectations around good vacancy management processes and be based on existing Victorian Government policies governing vacancy management.

Increase the supply, accessibility, and affordability of accommodation

It is necessary to increase the overall supply and variety of accessible and affordable housing stock, including SDA, so that real choice is not only possible, but the norm.

All new housing developments should be suitable and accessible to people with disability to increase the supply of options. A stronger emphasis on universal design must be embedded through clear and acceptable design principles, while also improving opportunities for people with disability to influence the design of accommodation, especially SDA.

The Victorian Government should explore alternative (non-group home) accommodation types and invest more in public housing. Developers should be required to provide a proportion of social housing in every housing development.

Stronger processes are required to embed the views of people with disability in every aspect of the NDIA's work. If individual developers, who simply see SDA as a revenue stream, are the only stakeholders that inform and drive what is built, that vision will not be achieved. There should be multi-agency input into the design principles, with consideration of empirical evidence and best-practice principles. Experience in developing SDA should be shared among existing and potential providers, with a bank or library of designs based on best practice standards available to prospective developers.

In the meantime, until the SDA market has developed, and the State has invested sufficiently in affordable housing options, other ways of supporting people with disability to access suitable housing should be explored, for example by:

- increasing rent assistance payments to facilitate access to the private rental market
- allowing people to use their NDIS funds flexibly to leverage private rental
- exploring home-ownership schemes for NDIS participants.

Where federally funded, such mechanisms could be linked to a requirement for State and Territory Governments to actively invest in housing options.

Ultimately, it is important to articulate a clear vision of accommodation options for people with disability over the next five to ten years.

Recommendations

Choice and control

1. In its review of the New Starter Program, the National Disability Insurance Agency should ensure that all planners and Local Area Coordinators (LACs) have relevant disability and mental health training, including training in communicating with people with communication support needs.
2. In its review of the New Starter Program, the National Disability Insurance Agency should promote a person-centred approach for planners, focused on participant outcomes.
3. The National Disability Insurance Agency should amend the SDA operational guideline to ensure that the goals and aspirations of participants are central to decisions about SDA type and location.
4. The Australian Government should amend the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to remove rules which imply that participants requiring 24/7 supports also require shared supported accommodation.
5. In order to meet Australia's obligations under the United Nations' *Convention on the Rights of Persons with Disabilities*, the National Disability Insurance Agency should ensure that all NDIS participants with unmet decision-making support needs are able to purchase such supports through their NDIS plans.
6. The Australian Department of Social Services should extend the National Disability Advocacy Program (NDAP) to address funding shortfalls for advocacy services.
7. The National Disability Insurance Agency should act on the Independent Advisory Council's recommendation to retain the separation of housing infrastructure and support as a policy imperative. This includes putting in place a policy that support coordinators, accommodation, and core support providers should ordinarily be independent of each other.
8. The National Disability Insurance Agency should act on the Independent Advisory Council's recommendation to implement a targeted strategy to foster the growth of contemporary and innovative options for housing and support under the NDIS.
9. As recommended by the Productivity Commission, the Council of Australian Governments (COAG) Disability Reform Council should clarify and publish the roles and responsibilities of the Australian, State and Territory Governments, the National Disability Insurance Agency, and the NDIS Quality and Safeguards Commission in relation to NDIS market stewardship.
10. The Australian Government should promote wider access to home share models and other emerging innovative housing options which foster community connections.
11. The National Disability Insurance Agency, in conjunction with Australian, State and Territory Governments, should adjust market levers and policies (including the pricing framework) to ensure the existence of sufficient numbers and diversity of SDA and crisis accommodation providers, and should also ensure that sufficient funds are provided so that SDA provision is able to meet future demand.
12. The National Disability Insurance Agency should establish a central register for participants seeking SDA.
13. The NDIS Quality and Safeguards Commission should provide guidance to SDA and SIL providers around effective and equitable tenancy management.

4. Workforce

Why it matters?

Workplace culture is a central determinant of the way staff treat people with disability; it has the potential to prevent abuse and foster positive outcomes for people with disability. Sector and organisational culture inevitably affect reporting practices, as well as staff responses to allegations of abuse, neglect and exploitation within their own workplace. A group home may be an employee's place of work, but ultimately and first and foremost, it is someone's home.

Case Story 6 from Community Visitors[56]

Community Visitors became aware of multiple allegations of serious abuse and assault by a staff member at a group home, despite being unable to access incident reports. In response to Community Visitors' questions, the service provider advised that an internal investigation had substantiated allegations that a non-verbal resident was spat at and hit with a shower head on three occasions.

The staff member's employment was terminated and the matter referred to police. The service provider also acted in response to Community Visitors' concerns that the allegations of abuse were witnessed by staff but not immediately reported.

Self-advocates said they primarily looked to staff and service providers in their homes to keep them safe from violence and abuse. In the absence of effective staff, however, a couple of self-advocates had taken on a protective role within their homes, stepping in to broker the peace and keep other residents safe.

Quotes from self-advocates on staff responding to violence in group homes

"They're [staff] the ones who are supposed to be looking after us."

"They [staff] should make sure we are safe."

"The staff are trying to fix the problem at the moment. I tell one of the staff about the other guy having a go at me but basically the staff aren't doing to anything about stopping the argument or stopping him calling me names."

"Sometimes I jump in… I tell the others to walk away and go up the other end and watch TV. I help them to walk away."

"I've got a right to say something. If someone hurts another person, I stick up for them no matter what."

"A lady at my house picks on me and does threats and I have to go to staff and tell them."

56. Office of the Public Advocate (Victoria), Community Visitors Annual Report 2018-2019, 30.

Is the disability workforce up to the task?

Education and training

In 2019, the Australian Government released its first national NDIS workforce strategy, *Growing the NDIS Market and Workforce*. The strategy speaks to an NDIS Capability Framework, to be released in the next three years, that will "set out the behaviours and core capabilities to be demonstrated by providers and workers when delivering services."[57] However, the strategy silent on minimum qualifications and professional development, and does not address employment conditions or NDIS pricing structure as recommended by the Joint Standing Committee on the NDIS as necessary elements to ensure success.

Quality of care is largely dependent on the skills of workers providing disability services. Formal professional and vocational qualifications are necessary, but OPA is of the view that this must be complemented with training and leadership on attitudes towards people with disability. Bullying and abuse of residents appears embedded in the culture of some services where there is an implicit acceptance of behaviours that cause harm and a reluctance to name this as violence. Leadership across the sector needs to instil a human rights framework and engrain the belief that violence and abuse of people with disability is not to be tolerated within the sector.

In the NDIS environment, all providers (registered and unregistered) and workers must comply with the NDIS Code of Conduct for which the NDIS Quality and Safeguards Commission has primary oversight responsibilities.[58] At just seven short requirements, the code is phrased in general terms and includes only one requirement explicitly relating to violence and abuse, which requires that "a Code-covered person must take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability."[59] This may not be sufficient to obtain full buy in from staff.

Community Visitors have also identified that a lack of supervision and monitoring of staff enables acts of violence to be perpetrated because actions are unseen. Some forms of abuse may not show in physical evidence; often the abuse is verbal or emotional so it will not be obvious or not be included in an incident report or recorded in the non-critical incident log. Community Visitors will therefore not view a record of the incident.

Case Story 7 from Community Visitors[60]

A female resident of a Supported Residential Service displaying serious assaultive behaviours was urgently relocated to a tranquil group home that was grieving from the recent death of a long-term resident. Her transition to the house was sudden and scant background information was provided to staff. Residents witnessed staff assaults and violent behaviour at day placement, the doctor's surgery and towards a family member. Staff were given specific behaviour support training.

The resident was admitted to hospital for a psychiatric review, remaining there for eight weeks. While there, her serious dental pain, which may have contributed to her behaviour, resulted in the extraction of nine teeth. She was unable to return to the house and, six months later, was living elsewhere with two-to-one support.

57. Department of Social Services (Australian Government) *Growing the NDIS market and workforce* (2019).

58. NDIS Quality and Safeguards Commission, *The NDIS Code of Conduct: Guidance for Workers* (2019) 31.

59. *National Disability Insurance Scheme* (Code of Conduct) Rules 2018 s6 (f).

60. Office of the Public Advocate (Victoria), Community Visitors Annual Report 2018-2019, 38.

Community Visitors are alert to cases of sexual assault of residents perpetrated by other residents. Residents who have a known history of sexual assault towards other residents are sometimes placed in group home settings without sufficient management of the risk of assault to other residents. Where Behaviour Support Plans outline risk management strategies to prevent abuse, these procedures may not be followed. The failure of providers to ensure supervision of the potential perpetrator and other workforce issues, such as inadequate staffing levels and the use of poorly briefed casual staff in high risk situations, are contributing factors to incidents occurring.

In contrast, Community Visitors document that distress and, in worse cases abuse, can be mitigated by skilled and appropriate staff training. Stable staffing and a positive staff culture do lead to better interaction and relationships between residents and staff, as well as between residents. Planning can transform a difficult house into one that is well managed.

Self-advocates argued there was a need for the provision of better, positive supports, but recognised that these approaches did not always happen or work in practice. Their discussion illustrated the need for compassion for the people engaging in violence and abuse in their homes, without undermining their strong assertions of the rights of all residents to live free from violence and abuse.

Quotes from self-advocates on positive supports as a response to violence in group home

"[What would help?] Trying to understand the situation, asking why they want to hurt people."

"[They need] positive things; go for a walk."

In many cases, clear behavioural support strategies can make a positive difference and create safer households, thus preventing violence from occurring. Behavioural strategies are usually also required in response to incidents of violence; a sustained multi-disciplinary approach is usually needed to address intractable situations of abuse in houses and to support residents following a harmful incident. This approach requires a provider's management to ensure the house and workforce is suitable and able to perform the tasks within the house relating to behaviour management strategies.

Supply and continuity

It is estimated that the NDIS reform will create an additional 90,000 full-time positions over the next five years, with over 70 per cent of these roles to be attributed to support workers.[61] This level of growth will require a steady and sufficient supply of qualified workers to join the sector, but in its 2017 study on NDIS Costs, the Productivity Commission claimed it was unlikely that the policies guiding the reform would enable the disability care workforce to meet these targets. The Productivity Commission identified the following challenges in facilitating such a quick growth spurt in the workforce: price caps on wage growth, ensuring sufficient supply of qualified workers to provide a reasonable quality of care, and building the workforce in regional areas.

61. Department of Social Services (Australian Government), *Growing the NDIS market and workforce* (2019).

In its 2018 inquiry on market readiness, the Joint Standing Committee on the NDIS raised concerns that casual and part time employment had increased by 33 per cent in the final quarter of 2017, thus representing the fastest growing types of employment in the sector.[62] Further evidence provided to the Joint Standing Committee related the difficulties faced by providers in attracting qualified staff, resulting in an increase in hiring of staff without formal qualifications.

Case Story 8 from Community Visitors[63]

Two teenage brothers needed only one staff member on duty. Community Visitors asked why one brother seemed concerned about who was coming. They discovered new staff worked only two 'shadow shifts' with an experienced staff member before working on their own. This exacerbated the brothers' anxiety about the many strangers caring for them. Staff were requested to have more time in the shadow role to build relationships with the brothers. This has not occurred.

Community Visitors will continue to advocate with the organisation on this issue.

Having a higher proportion of casual and part-time positions results in high turnover rates and Community Visitors observe that a lack of continuity in staffing can contribute to situations of abuse. Staffing shortages often result in minimally trained, casual and inexperienced staff working night shifts unsupervised with vulnerable residents. Community Visitors see an increase in the incidents of abuse between residents in houses where there is high staff turnover and vacant rosters are filled with unfamiliar and less experienced casual staff. Hence, the risk impacts residents and other staff alike. Furthermore, the use of intermediaries and recruitment agencies in the hiring process makes it difficult to hold staff responsible and accountable in the event of serious incidents.

Workforce selection

In 2014, DHHS established the Disability Worker Exclusion Scheme (DWES) which in 2016 was expanded to cover all disability services operating under the Disability Act. The DWES included a range of pre-employment checks in accordance with policies including the *Disability services employment safety screening compliance policy, the Service agreement information kit for funded organisations, the Safety screening policy (DHHS)* and the *Police records check policy*. These measures are focused on safety rather than qualification, and included, for example, first aid and CPR certificate, Working With Children Check, and driver's licence.

In the transition to the NDIS regulatory environment, worker screening is regulated differently within each State and Territory with an aim for national consistency. In Victoria, the *Disability Service Safeguards Act 2018* (Vic) will regulate registered and unregistered disability workers and there is hope that it will be a useful complement to NDIS safeguards.

62. Joint Standing Committee on the NDIS (Australian Government), *Market readiness for provision of services under the NDIS* (2018) 31.

63. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 33.

Sam

In Sam's story, it took multiple interventions including several moves across accommodation settings before responsive supports were put in place. However, the significant loss of Julie's father and consequent change to his living situation should have prompted the provision of more supports. Arguably, this could have prevented behavioural issues that led to violence.

Now, with the use of NDIS funding, Sam's psychologist is able to provide ongoing coaching and supervision to the care team on how to implement a trauma-informed model of support. It is hoped that this more therapeutic approach will complement behavioural strategies to reduce Sam's 'behaviours of concern'.

What needs to change?

Encourage relationship-based culture within services

A victim of violence only needs one trusted person they can confide in when they feel worried or unsafe. It is important for services to enable staff to dedicate efforts in service provision on fostering relationships between staff and residents, as well as between residents.[64] Following an episode of violence or abuse between co-residents, it is important to de-escalate situations quickly, support the people at the centre, listen to them, to actually hear what they want to happen, and inform their supporters about what is happening. It is also important to follow up with them again in the days and weeks afterwards.

It could be helpful for residents to generate a set of house rules by agreement. This needs to be driven by the residents but supported by staff. Staff (and potentially any police) responding to any incidents can then refer to and use the language of the agreed house rules. If these relationships are built in advance, police can be part of a team response, which can be very effective. However, a few of the self-advocates were sceptical about the utility of agreed house rules because their experience was that some residents just ignored them.

Poorly trained staff are unlikely to have a sophisticated understanding of disability and complex behaviours and may be unable to manage people with complex needs or to recognise and report actions that put residents at risk. Strong leadership and continuous professional development, supervision and support on the ground, such as mentoring by more highly trained and experienced staff, are needed to support less experienced staff to better understand and to learn appropriate communication, support and behavioural management strategies.

Upskill the disability workforce

Training and minimum qualifications of staff should be mandatory. New requirements could be added to existing system-wide requirements for provider registration under the NDIS.

The relationship between practice standards, the achievement of those standards, and what is funded in a person's NDIS plan needs to be recognised. Regular training and supervision of staff is required, particularly for people with complex support needs. Yet, the NDIS pricing framework is often too limited to cover the cost of both the trainer and the staff receiving the training, which limits access to professional development. Given that most staff work part-time and there is often a high staff turnover, providing funding for training on an 'FTE per year' basis is inadequate.

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64. Robinson, S., Oakes, P., Murphy, M., Codognotto, M., Ferguson, P., Lee, F., Ward-Boas, W., Nicks, J. & Theodoropoulos, D. (2019) *Building safe and respectful cultures in disability services for people with disability: Report.* Victoria, Disability Services Commissioner.

For businesses to be sustainable, the associated costs of implementing all required supports and meeting practice standards must be properly reflected in the pricing structure and in a participant's plan.

Explore alternative models of support

Positive behaviour support should be available and provided to service users across the system, rather than just applied in response to a 'pointy end' crisis. In other words, these supports should be provided at the prevention (primary) and early intervention (secondary) stages, rather than only at the response and mitigation (tertiary) stage. A preventative approach would focus on improving people's quality of life more broadly, and in turn, may help prevent many situations of abuse from arising. It is important that people with disability have an advocate in this process.

Rather than just labelling the person or their behaviour, it is essential to instil an organisational culture where staff are encouraged to talk with the (alleged) perpetrator to help understand why they behaved in a harmful way. Many people with disability have experienced significant trauma in their life. Violent behaviours may be related to past or recent trauma so it is imperative that all responses to violence and abuse in these circumstances are trauma-informed and aim to understand any triggers that may be at play. This requires time and individualised supports that go beyond positive behaviour support strategies.

The trauma-informed model of care that is generating positive outcomes for people with cognitive disability; it is one that considers an individual's emotional needs and past history of adverse events. The model is based on the assumption that 'challenging' behaviours are functional to the individual exhibiting them (e.g. In Sam's case, grief, loss, and loneliness were identified as triggers to aggressive behaviours). A psychological assessment is undertaken to determine the function of the challenging behaviour for an individual and identify the possible triggers that lead to outward, potentially aggressive, behaviours. More evidence and clinical leadership are required to determine whether trauma informed models of care could be beneficial in preventing violence between residents in group home.

Recommendations

Workforce

14. The National Disability Insurance Agency should require that all behaviour support practitioners and SIL workers have a competency standard equivalent to Certificate IV in disability to ensure consistent and safe supports across the system and to help prevent potentially harmful behaviours.

15. The Australian Government should review the *Growing the NDIS Market and Workforce Strategy* to ensure it addresses recommendations made by the Productivity Commission's study of NDIS Costs in relation to workforce targets.

16. The NDIS Quality and Safeguards Commission should consider the recent report by the Victorian Disability Services Commissioner, *Building safe and respectful cultures in disability services for people with disability*, and use it to inform the development of best practice guidelines for NDIS providers on creating safety within services.

17. The Australian Government, in collaboration with the NDIS Quality and Safeguards Commission, should amend the *National Disability Insurance Scheme (Code of Conduct) Rules 2018* and related guidance to reflect a zero-tolerance approach to abuse.

5. Responding to and reporting allegations of violence and abuse

Why it matters?

No one system can ensure fully that staff are safe to work with people with disability. It is critical, therefore, that robust requirements and regulatory oversight are in place in order to protect persons with disability from violence, abuse, neglect and exploitation. Reporting requirements and protocols can guide staff in their response to allegations and allow a layer of safeguarding and oversight by management and other statutory bodies.

Will the zero-tolerance approach be lost in transition?

Behaviour supports

Division 2 of Part 5 of the Disability Act provides safeguards to protect group home residents whose behaviours may otherwise place their tenancy at risk, including a requirement to review the resident's Behaviour Support Plan to address the underlying causes of their behaviour during any period of temporary relocation.[65] It also requires the disability service provider to arrange alternative accommodation for the resident during the temporary relocation period.[66]

When asked how to stop residents from hurting other residents, most self-advocates expressed faith in the power of service providers to improve the situation by talking to the (alleged) perpetrator and trying to understand the situation.

Quotes from self-advocates answering the question "What should happen when someone is violent or abusive in a group home?"

"Just walk away and try to calm them down."

"When people get violent, talk to them nicely, but don't lock them in a room."

"Sometimes they come forward and admit what they've done. [Discussions] should be done in a positive way."

"Try to teach the person who is hurting the other residents to try to respect the other residents and also explain to them what they're allowed to do and what they're not allowed to do, like hit the other residents."

"The staff should talk to the resident that's hurting everyone, and then talk to them and explain that they can't do that sort of thing."

"They should sit down and talk about it."

65. *Disability Act 2006* (Vic) s 74(11).

66. *Disability Act 2006* (Vic) s 74(5).

"They [staff] should take the person [alleged perpetrator] out for the day. What else can you do?"

"Take the other person [alleged perpetrator] out for a coffee."

Incident reporting and follow-up

For many years, Community Visitors have reported on how deficiencies in reporting and investigation compound other workforce issues. Failures in the system response can leave victims of violence and abuse at further risk and unsupported in the aftermath of what is often a traumatic experience.

Self-advocates felt staff should respond to violence and abuse but many of them felt that service providers often just had meetings and wrote incident reports in response, which they emphasised did not stop the violence from occurring. Despite typically liking the people who worked for them, many felt that the workers did not know how to handle these situations appropriately, with the result being that violence and abuse continued unabated.

Quotes from self-advocates on the role and efficacy of staff in reporting violence and abuse

"If the staff are busy [when I'm being threatened or assaulted], they can't get to me in time."

"If they hit staff or anything, the staff calm them down, and talk to them about what's going on. They go into a different room, or to their own unit."

"Staff call a private meeting, try to work it out. If it gets worse, they have to sort it out."

"The staff have started doing incident reports, almost non-stop. I don't mind the staff doing the incident reports, but until something actually happens then I'm not going to feel safe and I'm still a bit scared and I have to keep eating on my own without any of my friends to talk to… The staff are doing nothing to try to stop it… They are just doing incident reports, and they try to ask him nicely can he stop waking everyone up at 2am."

"Staff don't want residents to call police all the time because it gives the house a bad reputation. Staff have to call the supervisor before they can call the police. When a resident hurts another resident, staff would be more likely to talk about it and call a supervisor than call the police."

"It's a problem that staff don't know how to handle these situations."

In 2012, OPA gathered leading members of the disability, mental health, sexual assault and family violence sectors to develop the Interagency guideline for addressing violence, neglect and abuse (IGUANA),[67] which was published in 2013. At that time, IGUANA filled an evident gap for organisations that provided services to adults at risk of violence, neglect or abuse by providing an accessible and clear 'how-to guide' for responding to instances of violence that reflected good practice.

67. Office of the Public Advocate, *Interagency guideline for addressing violence, neglect and abuse* (IGUANA) (2012)

As described in the introduction to this report, a number of government inquiries were held on the topic of violence in disability residential settings, following which the Victorian Government released Dignity, respect, and safer services: Victoria's disability abuse prevention strategy. The strategy shared much with IGUANA and gave effect to the government's zero-tolerance approach by providing policy guidance to providers and workers in the sector.

One of the zero-tolerance initiatives was to develop a new *Code of Conduct for Disability Service Workers: Zero Tolerance of Abuse of People with a Disability (DHHS Code of Conduct)*. Obligation 2 of the DHHS Code of Conduct requires disability service workers to report any form of abuse or suspected abuse to their supervisor or manager. However, it does not dictate when abuse should be reported to other authorities, stating that this instead should be determined by each organisation's own policies and procedures.[68]

The DHHS' *Client Incident Management Guide*[69] sets out incident reporting obligations of disability service providers. Under the guide and prior to 1 July 2019, disability service providers (including Victorian-registered NDIS providers) were required to report incidents which occurred during service delivery and resulted in physical, emotional or psychological harm to the client (whether major or non-major impact) to DHHS.[70] DHHS would forward incident reports relating to alleged assaults and injury to the Disability Services Commissioner for review.[71] Additional funding stemming from the Government's zero tolerance commitment was dedicated to the Community Visitors Program to establish a referral pathway to report cases of violence and neglect to the Disability Services Commissioner.

Despite the multiple reporting mechanisms and obligations in place, comments made by the self-advocates cast doubt on:

- whether staff are aware of the DHHS Code of Conduct and NDIS Code of Conduct, and their associated guidelines, and whether these policies are consistently implemented
- how effective reporting mechanisms have been in improving organisational attitudes and ensuring better outcomes for people with disability
- how proactively and effectively supports are arranged for the alleged victim and perpetrator, as well as other residents in the home, to ensure everyone's ongoing safety and wellbeing when incidents are being reported.

Reporting to police

Under the *Client Incident Management Guide*, disability service providers were required to report any incident suspected of being a crime to Victoria Police if:

- the client/victim consented to that report being made
- the client did not have the capacity to decide whether to report the matter to police or
- the client did not want the matter reported to police, in prescribed circumstances which include where the victim has a cognitive impairment, they have suffered serious harm or they or other service users are still at risk of violence and abuse.[72]

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68. Department of Health and Human Services (Victoria), *Code of Conduct for Disability Service Workers: Zero Tolerance of Abuse of People with a Disability* (2018) 9.

69. Department of Health and Human Services (Victoria), *Client Incident Management Guide: Client Incident Management System* (2017).

70. Ibid 21-26.

71. Ibid 33.

72. Ibid 18; see also Appendix B: Responding to allegations of abuse.

Accordingly, this guide requires that all allegations of violence or potentially criminal abuse between co-residents in group homes be reported to police.

In September 2017, DHHS and Victoria Police endorsed a joint set of guidelines for disability service providers to “more effectively respond to people with disabilities who have been victims, witnesses or alleged perpetrators of abuse.”[73] The guidelines are intended to:

- “clarify the respective roles, responsibilities, procedures and interactions involving disability service providers and Victoria Police when dealing with allegations of abuse [and]
- give people with disabilities, their families and carers, certainty and confidence through the joint responses to their needs by disability service providers and Victoria Police.”[74]

The joint guidelines provide a wide-ranging list of abuse types and examples which may constitute a criminal act.[75] They are consistent with the *Client Incident Management Guide*, in that they state that disability service providers must report all abuse or alleged abuse to Victoria Police for investigation, regardless of the victim’s consent, particularly in circumstances where the victim has a cognitive impairment or they or other service users are still at risk of violence and abuse.[76]

Self-advocates all felt that police had a role to play in stopping violence and abuse in group homes. Given the policies and guidelines stating that all of these matters should be reported to police, it was concerning to hear that “staff don’t want residents to call police all the time because it gives the house a bad reputation.” Furthermore, many self-advocates had experienced or perceived that police did not, or would not, respond to violence and abuse in group homes. Still, they maintained that police should take the issue more seriously and do more to keep people in group homes safe.

Quotes from self-advocates on the role and efficacy of police in responding to violence and abuse

“Once I called the police and they said they don’t come out to people like us because we’re not normal… someone I lived with hit me… I was moved to a different house after that. That was about 12 months ago. I called 000. The person said we can’t come out. He was so rude to me. I had a staff member with me when I made the call.”

“Police are good. They always protect people.”

“Police only come out for emergencies.”

“I got bashed. Coppers couldn’t do nothing.”

73. Department of Health and Human Services (Victoria)and Victoria Police, *Responding to Allegations of Abuse involving People with Disabilities: Guidelines for Disability Service Providers and Victoria Police* (2018) 6.

74. Ibid 7.

75. Ibid 17.

76. Ibid 20.

Incident reporting in the NDIS

The NDIS Quality and Safeguards Commission commenced operation in Victoria on 1 July 2019 and is the statutory body that has oversight of NDIS-funded services. The Commission's role includes:

- responding to concerns, complaints and reportable incidents, including abuse and neglect of NDIS participants
- promoting the NDIS principles of choice and control
- requiring NDIS providers to uphold participants' rights to be free from harm.[77]

The NDIS Quality and Safeguards Commission's *Incident Management Systems: Detailed Guidance for Registered NDIS Providers*[78] sets out the reporting and incident-management responsibilities of registered NDIS providers. Note that NDIS legislation only require providers who deliver select classes of high-risk supports to be registered providers; this includes SDA but not SIL support providers. In practice, OPA has found that most, although not all, SIL providers are registered.

NDIS service providers must report to the NDIS Quality and Safeguards Commission any serious injury to, sexual misconduct towards, or abuse of a person with disability if the act occurred, or was alleged to have occurred, in connection with the provision of supports or services by the provider.[79] If, for instance, an incident occurred when the (alleged) perpetrator should have been receiving supports but was not, or the supports were ineffectual, it could be argued that the incident was in connection with the provision of supports or services by the provider. Should a reportable incident occur in an NDIS-funded group home, it would fall to the SIL provider to report it to the NDIS Quality and Safeguards Commission. NDIS policy requires providers to develop their own policies and response procedures, which the Commission can audit.

By way of comparison, the DHHS *Client Incident Management Guide* devotes the majority of its 93 pages to describing how providers should respond to and investigate incidents while the NDIS guidance material simply recommends that providers have a 'Response Plan', provides a few paragraphs of general guidance on how to support the impacted person immediately following an incident, and provides two pages explaining investigations.[80]

Promoting a culture of reporting

There are additional concerns that the marketisation of the sector will cause providers to view the reporting of incidents as an unfavourable mark on their business, making them less attractive to future clients. The culture within services may also include bullying of staff, intended to discourage reporting. Some staff who report incidents of staff-to-resident abuse fear losing their jobs. Anonymous reporting causes delays and can make inquiries of alleged incidents by Community Visitors difficult.

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77. NDIS Quality and Safeguards Commission, *What We Do*, Australian Government <https://www.ndiscommission.gov.au/about/about-the-ndis-commission/what-we-do>.

78. NDIS Quality and Safeguards Commission, *Incident Management Systems: Detailed Guidance for Registered NDIS Providers* (2019).

79. National Disability Insurance Scheme Act 2013 (Cth) s 73Z(4); *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) rr 16-17.

80. NDIS Quality and Safeguards Commission, *Incident Management Systems: Detailed Guidance for Registered NDIS Providers* (2019).

All NDIS-funded workers and providers must abide by the NDIS Code of Conduct, which has one requirement for staff to respond to abuse. In monitoring compliance with this provision, the NDIS Quality and Safeguards Commission will take a proportionate approach[81] and consider various factors such as:

- adherence to organisational policies and relevant laws
- the degree of cooperation with the NDIS Quality and Safeguards Commission
- initiative in identifying and responding to situations that could lead to violence or abuse and
- reporting of incidents to their employer (i.e. the provider), the NDIS Quality and Safeguards Commission and other relevant authorities (including the police, where appropriate).[82]

Community Visitors note that the approach adopted federally via the NDIS Code of Conduct does not have the strong underpinning commitment to zero-tolerance, as was the case with the DHHS Code of Conduct. The national code only requires service providers to make their best efforts to prevent abuse; the safeguarding of people with disabilities needs to place a premium on them being able to live safely and free from abuse.

Community Visitors

Community Visitors are a crucial safeguard. Similar Community Visitors' schemes exist in most States and Territories, although their operating parameters are slightly different. In the transition to the NDIS, the Victorian Community Visitors Program must adapt their operating model to a new and more complex safeguarding environment that is simultaneously operating within state and federal jurisdictions. Nonetheless, Community Visitors continue to play a vital safeguarding role to provide independent on-site monitoring of human rights, service delivery, and accommodation standards, as well as to relay complaints by residents to relevant complaints bodies as required.

Earlier this year, the Community Visitors New Operating Model Steering Committee was convened to respond to changes in the disability sector, including amendments to the Disability Act, the rollout of the NDIS, and the commencement of the NDIS Quality and Safeguards Commission in Victoria. The committee is considering which facilities can be visited, whether current visit arrangements need modification, training for Community Visitors, and how issues of concern can best be escalated. The impact of the transfer of the regulation of tenancy in SDA from the Disability Act to the Residential Tenancies Act 1997 (Vic) (RTA), and, hence, under the purview of Consumer Affairs Victoria (CAV), is also being considered.

While all self-advocates had heard of OPA's Community Visitors, none of them had called the Community Visitors before (although two self-advocates did approach Community Visitors to request a visit following the first consultation).

81. NDIS Quality and Safeguards Commission, The NDIS Code of Conduct: Guidance for Workers (2019) 3.

82. Ibid 24-25.

Case Story 9 from Community Visitors[83]

A resident at a group home wrote a letter to Community Visitors detailing 15 separate allegations of verbal and physical abuse against staff. Community Visitors were unable to view the incident reports that related to the allegations.

A staff member was stood down in response to the allegations pending an internal investigation and a notification made to the DWES. Residents' families were informed of the allegations and the processes for responding to such allegations.

Community Visitors applauded the resident for his courage in raising concerns on behalf of himself and other residents. All residents were provided with the contact numbers of senior service managers and offered advocacy. The group home has committed to monthly resident meetings to support residents to speak up about issues they may be having with staff.

Complexity and adequacy of safeguarding arrangements

Community Visitors are seriously concerned that the increased complexity of safeguarding arrangements means greater difficulty for both staff and residents (and their families) to navigate the service system and address safety concerns as they arise. Residents in disability accommodation services and their families are encountering an increasingly intricate and transitory environment where multiple safeguarding arrangements operate simultaneously.

Since 1 July 2019, compliance with the DHHS policies and guidelines is no longer mandatory or applicable for group homes that are no longer State-funded (i.e. homes that have fully transitioned to CSOs in the NDIS). Because the transition of DHHS group homes to the NDIS is not yet complete, reporting requirements may differ for residents in the same house. Residents living in 'in-kind homes' who do not yet have an NDIS plan remain under the State Government's safeguarding regime and as a result, the Victorian Disability Services Commissioner continues to receive and respond to complaints and oversee safeguarding for them. On the other hand, any resident that has an NDIS plan, whether new to the home or not, falls under the federal safeguarding regime of the NDIS Quality and Safeguards Commission. Further, some residents in these same houses are ineligible for the NDIS as they are over 65 years of age, so they will receive Continuity of Support (CoS) funding for their continued tenancy and support in group homes. They will, along with residents in some respite facilities or houses managed under Disability Justice, be covered by the State safeguarding framework. This means that in one single group home, differing safeguarding systems are operating simultaneously for different residents.

Further, in line with the intention of choice and control, new models of service provision are emerging in the NDIS context. For instance, some participants who are not be eligible for SDA may nonetheless choose to live together and share their SIL supports. Community Visitors will not be able to visit these homes, as they can only visit SDA enrolled dwellings where there are SDA residency agreements in place. This could mean that some people with disability fall outside any form of independent visiting and monitoring.

83. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2017-2018*, 49.

The NDIS is increasing the number service providers supporting people with disability. In the growing complexity of the safeguarding regime, service providers now operate in an environment that is increasingly difficult to monitor. This may lead to residents in group homes being more vulnerable than ever. Community Visitors are concerned about the possibility that situations where abuses of the fundamental human rights of people with disability will be unobserved and unreported.

What needs to change?

Provide supports after an incident of violence

A timely, integrated service system response is required in situations of violence, abuse, and neglect, but the system is now so complex that it is difficult to understand who does what and who to talk to when things go wrong. The fractured nature of the service system creates difficulties because people with disability experience a range of needs and are supported by providers that operate across federal and state levels.

The NDIA takes a narrow view of its role as a funder of supports but does not think enough about the broader system or how all parts of the system must work together to meet people's needs. The ultimate responsibility for coordinating all government supports for people with disability rests with the Australian Government, but the NDIA has a responsibility and duty to ensure disability supports are delivered in a flexible and responsive way.

When someone is (or is at risk of being) in crisis or evicted, rather than having to wait months for an NDIS plan review, funding must be immediately available to implement additional, wrap-around supports as needed. This could be done through a fast-tracked plan review or approval process, contingency funding being pre-emptively built into plans (at least for those coming through the Complex Support Needs Pathway) or a separate funding stream not tied to individual plans. There also needs to be a designated provider of last resort for both SIL and SDA to avoid participants ending up homeless, in mental health units or in prison.

Access to psychological and counselling services is particularly important preceding and following an episode of violence or abuse yet, despite high rates of mental illness and trauma associated with disability, people with cognitive disability often struggle to access these services. There are few providers targeting or adapting their services to people with cognitive disability, even though research demonstrates that modalities such as trauma-informed care can effectively reduce violent behaviours. Furthermore, even when a suitable provider can be found, the NDIS will sometimes dispute funding of psychology or counselling, considering this to be the responsibility of the mental health system or sometimes the justice system. The out-of-pocket costs, even with a Mental Health Care Plan in place, can be prohibitive. Where the need for psychological support is related to an incident of violence that occurred in the provision of disability supports and thus, is connected to the person's disability, the NDIS should fund those supports.

Key recommendations

Responding to violence

18. The National Disability Insurance Agency should enable contingency funding to be immediately accessible to participants when crises arise. This approach would require:
    - designated liaison and emergency contact points
    - procedures within the National Disability Insurance Agency (or authorised agencies) which are responsive during and outside of business hours
    - fast-tracked plan reviews/approval processes.
19. The National Disability Insurance Agency should fund psychological and/or trauma-informed counselling supports when the need for those supports is related to an incident of violence, abuse, or neglect that occurred in the provision of disability supports.

Provide advocacy supports

People with disability need better support and advocacy to assist them to report any concerns. With a better understanding of their rights and of the NDIS context, including the separation of SDA and SIL and the portability of their NDIS funding from one provider to another, participants may feel more confident to report without fearing they will lose their home or supports.

Promote a culture of reporting within services

The NDIS Code of Conduct requires workers and providers to act with integrity, honesty and transparency.[84] The public discussion, including media portrayals, as well as the NDIS Quality and Safeguards Commission's discourse must be reframed so that reporting about complaints and incidents is seen as a positive opportunity for quality assurance, a demonstration of transparency and continuous improvement. Low levels of reporting should be monitored by the NDIS Quality and Safeguards Commission to trigger further investigation and triangulation with information sought directly from residents to gain a better understanding of the actual level of problems.

Increased and better quality reporting should be encouraged by the NDIS Quality and Safeguards Commission by making it simpler for workers to report instances of abuse, for instance by having a single form rather than separate forms for each agency that needs to be notified (e.g. their employer, DHHS, and the NDIS Quality and Safeguards Commission). It is important for guidance to be published that relates not simply to reporting that violence has occurred but also states the steps and follow-up that should take place to respond to it.

Clinical and practice governance frameworks from other sectors such as aged care and health should be examined and, where appropriate, drawn on where open disclosure has been normalised for some years. For instance, when a system failure occurs in the health sector, it is admitted to all involved parties, solutions are identified, and learnings are shared. Similar cultures and practices need to develop in the disability sector. Similarly, the disability sector could benchmark best practice indicators of risk and quality, drawing on those that have been in place in the health sector for 30 years.

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84. *National Disability Insurance Scheme (Code of Conduct) Rules 2018* (Cth) r 6(d).

The NDIS poses new challenges to open and collaborative processes: unlike the health sector which is the state's clear responsibility, the disability sector now relies on the integrity of individual service providers under the NDIS, not all are registered and not all which will act responsibly. It is harder for private providers in a competitive market to participate in open, information-sharing activities, as they may fear reports of incidents will be interpreted as poor service delivery. The NDIS Quality and Safeguards Commission will need to educate providers otherwise.

Publish system-wide data

The NDIS Quality and Safeguards Commission has the necessary broad regulatory powers and the capacity to drill down into the data it receives to look at specific properties, providers and workers. Through data analytics, the NDIS Quality and Safeguards Commission would be able to uncover specific instances and patterns of abuse and hold service providers to account for the safety of NDIS participants. However, the challenge will be for it to find the resources needed to utilise its powers, examine all the reported information, and respond in a timely and effective manner.

The NDIS Quality and Safeguards Commission should publicly report on violence and abuse occurring within NDIS-funded services but this requires the will of the Commission, as ultimately the Commissioner can choose to exercise their powers towards any objective. It will be important for the NDIS Quality and Safeguards Commission to support providers to improve over time and to revoke or decline registration for providers that are engaging in poor practices. Other agencies will need to call on the NDIS Quality and Safeguards Commission to use the full scope of its powers to make sure it realises its responsibilities.

Facilitate collaboration between statutory authorities

The NDIS Quality and Safeguards Commission needs to establish working relationships with existing state-based statutory authorities to ensure information can be shared in the optic of identifying, resolving and responding to incidents of abuse, violence, neglect and exploitation occurring within NDIS-funded services.

Key Recommendations

Reporting and oversight

20. The NDIS Quality and Safeguards Commission should publicly report aggregate data on violence, abuse, neglect and exploitation occurring in NDIS-funded services.

21. The *National Disability Insurance Scheme Act 2013* (Cth) should be amended to include reference to legislation authorising the Victorian and other Community Visitors Programs as a key component of the NDIS safeguarding arrangements. Amendments should ensure that:
    - Community Visitors are entitled to see copies of a participant's NDIS plan, any documentation related to a participant's SDA tenancy arrangements, as well as the documents they are currently authorised by legislation to see when visiting.
    - Community Visitors and other comparable entities who are appointed under state and territory legislation are entitled to share information to the extent necessary to advocate for participants and raise concerns with relevant complaints bodies.

22. The National Disability Insurance Agency and the NDIS Quality and Safeguards Commission should establish protocols or memoranda of understanding (MOU) with organisations and statutory authorities with whom they have ongoing working relationships to facilitate information sharing in a way that assists the parties to perform their respective powers and functions.

6. Relocation and eviction of residents

Why it matters?

Physically separating the (alleged) perpetrator and victim, managing their ongoing relationship and ensuring the safety of all people within the group home following an episode of violence or abuse can be challenging. This may lead to the (alleged) perpetrator being relocated or evicted from the home, although sometimes it is the victim who moves out. In other instances, one person is both a perpetrator and a victim of violence, causing confusion as to the best way forward.

Community Visitors observe that it has become standard practice to relocate the perpetrator of violence in group homes, rather than the victim. However, the transition to the NDIS increasingly impedes or delays relocation due to inadequate resourcing, unavailability of crisis or alternative accommodation, and confusion on the safeguards that apply in any given scenario.

Does relocation occur safely?

Community Visitors find that resident compatibility is an ongoing issue, however options to relocate elsewhere are limited. Often, it takes months or even years to resolve situations where residents are, and remain, at risk of abuse and violence within their home. In one case, Community Visitors met on several occasions with a resident who had assaulted a co-resident yet had remained in the unit while the victim slept on a fold-out bed close to the staff office for nearly 12 months.[85]

Self-advocates were unanimous that a violent person should have to move out and should not be allowed back into the same house, and they wanted a say in this decision. Some self-advocates voiced the opinion that violent people should be housed separately from those who are not violent. Importantly, all self-advocates were adamant that people who engaged in violent and abusive conduct should not just be shuffled around between different group homes, thereby endangering other people, without the underlying issues being addressed. As noted above, self-advocates demonstrated concern and compassion for the people engaging in violence and abuse by wanting them to get additional, specialised supports to prevent further incidents.

Quotes from self-advocates on relocation and eviction of residents who are violent or abusive

"The new guy has only been there four to six months… He's already causing trouble. He was making trouble in another house and that was a group home also but with a lot more people, but they didn't like him either."

"Why don't we separate people with disabilities? We should put people who are violent in one home. People who are not violent should be together. It's just an idea."

"They should think about separating the two [co-residents in my home] who are peaceful and the two who are violent."

85. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-19*, 34.

"[Should residents who hurt other people have to move out?] They're going to do it in another house, so what's the point?"

"[The co-resident who is threatening me] should move. I don't want him to live with me. He's been there for 15 years… I've been in the house seven years. I want to stay in the house; I don't want to move."

"The other residents should have a choice [about whether a violent resident has to leave] – if the four of us can make the choice and ask the house supervisor if it's ok if the fifth person can move out and [be] put in a separate home somewhere different… he should move to a different house."

"We should be able to trust staff to make the right decision about where to put the person who is hurting others."

"They should be put in a different home."

"They should be put in a special home. They should get a bit of help. They may not understand, when they hit someone… They should live in a special home where they get lots of help… They should have a psychiatrist… and nurses should help them, for the ones who don't know right from wrong."

"[The violent person] probably should get assistance with getting more help, and more information about how he's not allowed to push anyone over and kick them and hurt anyone."

The impact of the NDIS roll out

The domain of DHHS policy guidance and influence has and continues to be substantially contracted since 1 July 2019 when existing group homes in Victoria transitioned away from State block-funding arrangements to individualised NDIS funding. There now seem to be various classes of group homes operating simultaneously within the sector:

1. former DHHS houses that have transferred to one of five CSOs and receive in-kind funding
2. CSO houses where the SIL supports are paid by residents through their NDIS funding
3. CSO houses where the SIL is paid for by some residents who are funded through the NDIS and some who are not
4. remaining CSO houses where some residents who are yet to transition to the NDIS or are ineligible for the scheme receive daily supports funded through DHHS.

Multiple systems co-exist, thus the applicable safeguarding regime can be determined by tracing back the source of funding for the supports provided to the resident in question. The situation becomes more complicated when it involves several residents under different funding streams, which is likely to happen.

DHHS policy

The DHHS *Client Incident Management Guide* outlines the approach where the alleged victim and perpetrator involved in an incident of violence reside, attend, or work in the same setting. The steps, summarised here, are as follows:[86]

1. prevent further contact between the alleged victim and alleged perpetrator
2. plan for relocation, with thorough consideration of the particular circumstances (e.g. the length of time a client has been residing in the facility)
3. in the case of the relocation of a client with disability, the approach is on a case-by-case basis in compliance with:
    a. the requirements of the Disability Act
    b. obtaining the consent of the client (or guardian)

The joint DHHS and Victoria Police Guidelines reiterate this approach and further state:

> "When police have been involved, it is recommended that decisions about possibly relocating the person to another service should take place via case management. Collective decision-making involving police, service providers and the department will more effectively provide for the safety and disability support needs of both parties."

Neither the *Client Incident Management Guide* nor the joint DHHS and Victoria Police guidelines articulate a role for residents in deciding, or at least contributing to the decision about, whether a co-resident should be asked or forced to leave. They do incite case management and supports to be put in place and impose a consideration of the individuality of each situation.

Notices to relocate

Under the Disability Act (i.e. for State-funded services), the Secretary of the DHHS along with the Public Advocate are notified of all notices of temporary relocation and notices to vacate. OPA has found the rate of notices issued by disability service providers, including DHHS, has increased considerably in recent years.[87] This is partly related to changes brought about by the NDIS reform, as in 2018-2019 one of the most frequently cited reasons for emitting a notice of temporary relocation was in relation to repairs associated with the improvement of properties for the purposes of the NDIS.

OPA is concerned that some residents with challenging behaviours are perceived as being too 'difficult' to manage and, as a consequence, are being removed from their accommodation without any meaningful steps being taken to address the underlying issues, as is intended and articulated in the DHHS policy. This contravenes the intention of the requirement for notices; the purpose of the notice is to act as a circuit breaker, allowing a provider to move a resident to another location while actively seeking to address the causes of their behaviours. If the issues and behaviours can be addressed in such a way that a person can return to the home, then that is the resident's entitlement.

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86. Department of Health and Human Services (Victoria)and Victoria Police, *Responding to Allegations of Abuse involving People with Disabilities: Guidelines for Disability Service Providers and Victoria Police* (2018) 27.

87. Office of the Public Advocate (Victoria), *The Illusion of Choice and Control: The Difficulties for People with Complex and Challenging Support Needs to obtain Adequate Supports under the NDIS* (2018) 40.

OPA is aware through its Community Visitors Program that many people with disability are being relocated without respecting the procedures of the Disability Act. It appears providers are activating the circuit breaker but are not necessarily aware that they have responsibilities to work with the resident to return them to their home safely.

Community Visitors also report residents being relocated without any notice of temporary relocation being issued. It is sometimes that the relocation is executed with the resident's consent and therefore no notice is required, but on many occasions, it is suspicious that a resident would have consented to the situation at hand and it appears that a notice should have been issued.

SDA residential tenancy agreements

As of July 2019, new tenancies in SDA properties are governed by the RTA and existing group home residents began the transition to this regime. Disability Act provisions continue to apply to existing Victorian group home residents until they sign an SDA residency agreement or a residential tenancy agreement, thereby coming under the protections set out in the RTA. SDA residents may enter either a standard residential tenancy agreement or a new SDA residency agreement. The changeover of agreements started in August 2019 when the forms were made public; it was initially planned to be completed by 1 January 2020, however, very few residents have transitioned by the time of this report and so the deadline is unlikely to be met. This will lead to a staggering of transition over a longer timeframe, increasing uncertainty as to which regime of law applies in particular circumstances.

The relocation and eviction of SDA residents who have signed an SDA residency agreement will be governed by Part 12A of the RTA. These new provisions are modelled on the provisions of the Disability Act but account for the diminishing role of DHHS as well as the separation of SDA (physical property) from SIL (daily support services) under the NDIS, creating new roles and responsibilities.

Under the RTA's SDA provisions, an SDA resident can be evicted on grounds[88] including endangering the safety of co-residents or staff, causing "serious disruption to the proper use and enjoyment" of the SDA property by co-residents, or causing serious damage to or destroying any part of the property.[89] Before they can be evicted, the SDA provider must issue a resident with a notice of temporary relocation, which lasts up to 90 days.[90] During this time, the resident "is to be relocated by the SDA provider in alternative accommodation that is suitable for [them]."[91] The SDA provider must also notify the NDIA, the Public Advocate and the director of CAV within 24 hours of the notice (penalties apply), and take reasonable steps to notify the resident's SIL provider as soon as possible (no penalties apply).[92]

There is no longer an obligation to notify the Secretary of the DHHS of any relocations or intended evictions, nor an obligation on any party to review the person's support plan or needs (however, it is presumed that a notification to the NDIA would trigger a plan review due to a change of circumstances).[93]

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88. *Residential Tenancies Act 1997* (Vic) s 498N(2)(b). NB even though this was not an explicit duty under the *Disability Act 2006* (Vic), it was still a ground for issuing a notice of temporary relocation or notice to vacate: ss 74(1)(a), 76(1)(a).
89. *Residential Tenancies Act 1997* (Vic) ss 498ZX(1)(a), (c), (f).
90. *Residential Tenancies Act 1997* (Vic) ss 498ZV(2), 498ZX(3).
91. *Residential Tenancies Act 1997* (Vic) s 498ZV(7).
92. *Residential Tenancies Act 1997* (Vic) ss 498ZV(4), (6). Similar notice must also be provided following a notice to vacate: ss 498ZX(7), (9).
93. Cf *Disability Act 2006* (Vic) ss 74(4), 74(11), 76(7).

The obligation to "take reasonable steps to resolve the matter giving rise to the issue as soon as is reasonably possible in the circumstances" has shifted from the disability service provider to the SDA provider (i.e. accommodation) under the RTA,[94] but it is unclear what steps the SDA as a housing provider can reasonably be expected to take to resolve the situation where a resident has been violent or abusive. Previously, DHHS, as the bulk funder of services, had an extensive overview of residential services, and, perhaps more importantly, could leverage providers to comply or step in when needed.

Unlike under the Disability Act where there was no room for discretion, before making a possession order to evict an SDA resident, the Victorian Civil and Administrative Tribunal (VCAT) must now have regard to any guidelines issued by the director of CAV and be satisfied that, in the circumstances of the particular application, it is reasonable and proportionate having regards to various matters, including:

- whether the matter is trivial
- the interests of other SDA residents living there
- whether suitable alternative accommodation is likely to be available and
- whether any other course of action is reasonably available.[95]

Under the RTA's SDA provisions, an SDA resident does not breach a duty, and therefore cannot be relocated or evicted on the basis of causing serious damage to or destroying any part of the SDA property, where that conduct was substantially contributed to by:

- "any behaviour arising from their disability, including behaviour in response to circumstances aggravating to [their] disability or emotional wellbeing[96]
- any failures by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan[97]
- the unauthorised use of any restrictive practice against them[98] or
- circumstances suggesting they have been subject to abuse or neglect.[99]

This protection was introduced into the RTA by further amendments passed in June 2019 "to provide protections for persons with complex needs who require [SDA] against eviction into homelessness."[100] However, this protection does not extend to behaviours which seriously disrupt co-residents' use and enjoyment of the property or which endanger the safety of co-residents or staff, which may still lead to eviction even if the above extenuating circumstances apply. There is potential that the protections will therefore not apply in situations of violence between co-residents in an SDA.

It remains to be seen how these new processes will be applied in practice, how well all parties will work together to ensure appropriate supports are in place and, especially with DHHS no longer involved, how willing and able SDA providers will be to resolve situations and source suitable, alternative accommodation at short notice.

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94. *Disability Act 2006* (Vic) s 74(13); RTA s 498ZV(12).

95. *Residential Tenancies Act 1997* (Vic) ss 498ZZH(1)(c), 498ZZH(1A), 498ZZHA.

96. *Residential Tenancies Act 1997* (Vic) ss 498N(3)(f), 498ZP(2A)(f), 498ZV(2A)(f), 498ZX(4A)(f).

97. *Residential Tenancies Act 1997* (Vic) ss 498N(3)(g), 498ZP(2A)(g), 498ZV(2A)(g), 498ZX(4A)(g).

98. *Residential Tenancies Act 1997* (Vic) ss 498N(3)(h), 498ZP(2A)(h), 498ZV(2A)(h), 498ZX(4A)(h).

99. *Residential Tenancies Act 1997* (Vic) ss 498N(3)(i), 498ZP(2A)(i), 498ZV(2A)(i), 498ZX(4A)(i).

100. *Disability (National Disability Insurance Scheme Transition) Amendment Act 2019* (Vic) s 1(b)(iv).

Standard residential tenancies agreement

One, possibly inadvertent, consequence of the changes to Victorian laws to locate tenures in the RTA is that all residents on the property will have the same tenure agreement. All residents will be on SDA residency agreements or there will be one regular or standard lease for all the residents on the property. If there is a mixture of residents, that is some with SDA funding in their plan and some without, the only option is the standard lease for the property.

Accordingly, the SDA residents miss out on the protections and monitoring available under an SDA residency agreement. None of the disability specific protections will apply to participants under a standard agreement, for example where SDA and non-SDA funded residents share a dwelling. Furthermore, they will not benefit from the independent oversight of Community Visitors.

This may create an incentive for providers to prefer a standard lease because that would make it easier to evict someone. There is also an incentive for SDA providers to offer standard leases because residents have fewer safeguards. Consequently, group home residents risk losing out on the new SDA tenancy protections in the RTA.

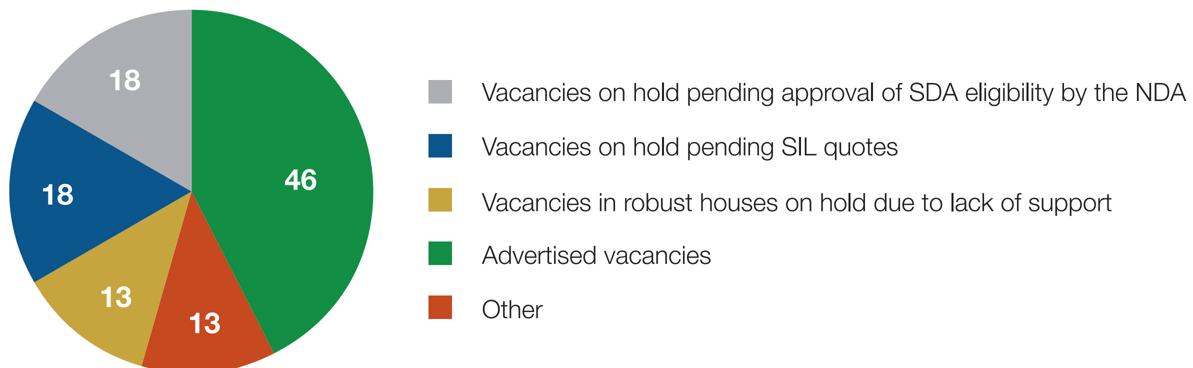
OPA is concerned that the legislation, and indeed the NDIA, does not position the SDA residency agreement as the standard agreement for SDA residents and that these protections will fall away for many group home residents.

SDA eligibility and reassessment

Some group home residents may not have met the SDA eligibility criteria had they not already been living in a group home at the time the property was registered as SDA, but pursuant to the principle of no disadvantage, have gained access to SDA funding. This will potentially have implications for residents wishing or needing to move out of a group home, especially if they are being evicted on account of violence. The Victorian Government assured OPA and others that residents who accessed the NDIS from within a DHHS group home but, had to relocate to a non-SDA property, would maintain their SDA entitlements. In OPA's experience, however, most people moving in these circumstances have been required to undergo a reassessment of their eligibility, despite the Victorian Government's assurance that their eligibility is inalienable.

Community Visitors have received advice that an SDA relocation, whether initiated by a participant or another interested party, necessarily requires a reassessment. The intention of a reassessment in this circumstance is, presumably, to provide a participant with choice and control over the features of the next SDA. However, there are delays in obtaining an NDIS plan review and the associated assessments to confirm whether the person meets the criteria for SDA and SIL in relation to the proposed new property. This is an additional barrier to them being able to move into safer or more appropriate accommodation quickly.

These delays also result in extended vacancies in SDA properties when the participant to whom the place has been offered has to wait for the NDIA processes to take their course. The extent of this problem is revealed in the following DHHS data provided to Community Visitors during a liaison meeting:



SDA provider vacancies, September 2019, East Division of DHHS[101]

The data above shows that, in practice, 49 participants in the East Division are each taking up two SDA positions, that is, the one they reside in and the one that is reserved for them to move into. While this may be a necessary measure for a participant in the short-term, situations like these can last many months, during which other participants could be benefiting from either of the positions. From the point of view of providers, these types of delays, which are not uncommon, cause a serious financial strain. In the long run, administrative delays engendered by SDA reassessments could deter SDA providers from entering or remaining in the NDIS market.

In a very recent development, *the Specialist Disability Accommodation Operational Guideline – Describing SDA in a participant's plan* has been updated with a provision relation to participants already residing in SDA. Part 6.3.7 of the SDA Guidelines provides that "[t]he participant's plan should also specify the appropriate SDA type and location so that this can be funded for the participant without the need for a plan review should the participant move."[102] OPA's expectation would be that the type and location of the SDA the participant is currently residing in should be considered the SDA type and location for the purposes of that part if not included in the plan.

Provider of last resort

The search for stable, appropriate, alternative accommodation at short notice is incredibly difficult in the NDIS market, as discussed previously. There is a serious shortage of affordable housing in Victoria, including in the limited NDIS-funded SDA stock and respite (STAA) options, and very long waiting lists for social housing. The 2016 Parliamentary Inquiry into abuse in disability settings found the undersupply of housing is a factor in the occurrence of violence and abuse between co-residents[103] and Community Visitors are concerned that this risk factor is amplified in the NDIS context with a lack of accommodation for residents with challenging behaviours. They seem to be missing out under the NDIS system, placing them in untenable living arrangements. As a result, a victim of violence wishing to leave may instead be trapped in their existing shared accommodation setting feeling unsafe and fearful in their own home.

101. Data provided to the Community Visitors by the vacancy coordination team within DHHS.

102. <https://www.ndis.gov.au/about-us/operational-guidelines/specialist-disability-accommodation-operational-guideline-3>

103. Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Settings* (2016) 9.

Case Story 10 from Community Visitors[104]

A family member alerted Community Visitors to multiple incidents of aggression by a resident towards other residents and staff at a group home. Residents were taken to hospital on separate occasions and they were unable to participate in regular activities during their recovery.

In a separate incident, staff locked themselves in the office and waited for the police to arrive. In response, the provider arranged additional staffing at peak times and engaged behaviour support specialists. Despite some improvement, DHHS acknowledged the dysfunction was exacerbated by changes to management and staff shortages.

The resident with behaviours of concern was relocated to more appropriate residential accommodation. Unfortunately, due to a shortage of independent living units, the solution to this problem then precluded another resident from transitioning to their long awaited accommodation.

In the new NDIS market, SDA providers can choose to refuse to offer a tenancy to a prospective resident who may seem too ‘difficult’. This is especially the case for those residents who engage in violence and who are not afforded the supports needed to manage their behaviour. They can be seen as ‘unattractive’ clients to SDA providers, frequently leading to a plethora of unsustainable, short-term arrangements or homelessness if people in these circumstances are evicted.

OPA and Community Visitors are aware of many instances of people with disability being relocated to motels and caravan parks.[105] In some cases, already fragile families are put under intolerable pressure to provide last-resort support and accommodation.[106] Unstable and unsuitable accommodation can trigger high-risk behaviours and in complex matters can cause a perpetrator to be subjected to unnecessary detention in the mental health or criminal justice systems, especially in the absence of designated service providers of last resort.[107] Others are moved into individual SDA enlisted properties that are highly restrictive, constructed with concerning numbers of built-in environmental restraints. There are no safeguarding arrangements that prevent a service provider from building or offering a vacancy in these isolating homes and it is important that their construction be monitored so that they do not become the go-to option for participants with challenging behaviours. In a market environment, there is an additional risk that these homes will go unnoticed and, further, that they may eventually be used by individuals who do not require robust SDA but cannot find alternative accommodation.

Respite

Before the NDIS, respite services (STAA for NDIS purposes) could be used as a temporary or intermediate solution to resident incompatibility. However, Community Visitors identify a trend in reduced utilisation of facility-based respite services in the NDIS service environment. It is worrisome that STAA service providers are reconsidering whether to continue operating some respite services within the NDIS market; their exit would reduce options further. If there is less facility-based respite available in some locations, the strain may fall upon informal supports, as respite is a support option that works well for many families. It should be noted, however, that some agencies are effectively adapting to the changes brought on by the scheme.

107. Office of the Public Advocate (Victoria), *The Illusion of Choice and Control: The Difficulties for People with Complex and Challenging Support Needs to obtain Adequate Supports under the NDIS* (2018) 42.

Avoiding the language of provider of last resort, the NDIA has been piloting a project titled *Maintaining Critical Supports* that, among other things, is designed to address market failures. Many years after its announcement, the operations, outcomes and geographical scope of this project have not been made public. The Australian Department of Social Services also led consultation on the Thin Markets Project earlier in 2019, but the results or next steps have not yet been announced.

Case Story 11 from Community Visitors[108]

Community Visitors were made aware of a woman who was physically assaulted by a co-resident in her group home. Despite being approved for a vacancy in another group home, she has not yet been able to move out of the home in which she was assaulted because the SIL cost quoted for the new group home was higher than for her current home and there was no funding available to obtain an assessment to demonstrate whether that higher level of SIL was reasonable and necessary. Many months after requesting an NDIS plan review, and after assertive advocacy from her lawyer, support coordinator and mother, the NDIA has finally agreed to fund the new group home SDA and SIL, a full 12 months after she was assaulted.

Sam

For Sam, there was a real concern that he could lose his placement in the DHHS house while he was in respite. Indeed, Sam's guardian strongly advocated for his vacancy to be maintained when DHHS threatened to give it up. In the transfer of the group home from DHHS to the NDIS, a new threat emerged whereby the CSO was no longer bound or obliged to provide services if the provider considered Sam's needs to be too complex, thereby effectively absolving the State of Victoria of its previous responsibility to provide Sam with accommodation. Because of limited availabilities in the NDIS market, Sam chose to move into a non-SDA home, even though he was entitled to SDA. This means he has forfeited his SDA entitlement, which could affect his future options to live in SDA.

What needs to change?

Promote the use of SDA residency agreements

It is problematic that SDA providers are not obliged to offer (prospective) residents the choice of an SDA residency agreement or a standard residential tenancy agreement. There is a need to educate participants, their families and supporters to understand the safeguarding benefits that come with the signing of an SDA agreement.

Take a person-centred approach to relocation and eviction

By the time a notice of relocation or temporary relocation is being contemplated, service providers are often fatigued and weary. Increasingly, service providers are arguing that clients with complex support needs pose an occupational health and safety risk to their staff, in terms of physical and psychological safety, and use this as justification to refuse service provision to some NDIS participants. Risk aversion should not be guiding decisions about relocation and eviction.

108. Note that this case example has not been published in a previous Community Visitors Annual Report as the situation was still unfolding at the time of publication of the 2018-2019 report. The story was provided by the Community Visitors Program for the purposes of this report.

It represents a failure of supports at an earlier stage, which highlights the importance of properly funding and implementing positive behaviour supports and other effective strategies as a prevention measure, that is before situations escalate to a crisis, with the ultimate underlying objective of fostering positive outcomes for all residents.

While there is a requirement that SDA providers support a resident through a relocation or eviction, more can be done to ensure person-centred principles guide these decisions. Safety should be paramount, with documented consideration given to whether it can be guaranteed in a participant's current setting, with supports provided accordingly.

Compliance with all SDA-related rights, duties, obligations and processes embedded in the RTA will be critical. This will require proactive monitoring. CAV will need to be encouraged and supported in this role as it is a new responsibility for it.

Support participants using a multi-agency response

Encouraging STAA service providers to remain in the market is part of the solution, but this alone will not address the underlying causes of the violence and abuse. Instead, as noted above, wrap-around, multi-disciplinary teams should be on standby, available to come in and provide immediate supports at the time of an incident or crisis, wherever the person is. A coordinated, multi-agency approach, including advocacy, is required. This could be linked to the Complex Support Needs Pathway, where applicable, and would certainly involve bringing all those affected by the decision into a problem-solving discussion (including residents, family members, advocates and service providers).

Facilitate or waive the need for an SDA reassessment

NDIS administrative processes must permit quick and efficient relocation. If a participant's safety is compromised, an NDIS plan reassessment should not be necessary to give effect to a relocation. It also should not be necessary when a person is moving between SDAs offering similar levels of support.

Publish and implement a provider of last resort framework

Reliance on the market alone, in which providers are able to refuse to offer tenancy to a participant with complex needs and/or challenging behaviours is insufficient to meet the needs of this cohort of people. A provider of last resort framework is urgently needed to prevent victims and perpetrators of violence from being thrust into inappropriate settings when the market does not respond adequately.

Recommendations

Relocation and eviction

23. The Victorian Government should seek to amend the *Residential Tenancies Act 1997* (Vic) to require SDA providers to offer SDA residency agreements as the default agreement to (prospective) residents in all SDA properties.
24. The Victorian Government should extend the scope of the Community Visitors Program to provide independent monitoring of NDIS funded non-SDA shared supported accommodation settings in Victoria.
25. The NDIS Quality and Safeguards Commission should produce guidelines for SDA providers in relation to their obligations to support participants when a notice of relocation or eviction is served.
26. The National Disability Insurance Agency should publish, consult on, and implement its Maintaining Critical Supports and Immediate Support Response policy and framework as a matter of urgency. This policy and framework should ensure that:
    - provider of last resort mechanisms are established as an ongoing component of the NDIS market
    - multiple designated providers of last resort are clearly identified
    - providers of last resort are adequately resourced to enable them to respond immediately in situations of market failure (which includes having staff available on short notice)
    - the providers and their staff have specialised experience, skill and expertise that are relevant to the specific needs of participants
    - clear procedures exist to guide planners, local area coordinators and support coordinators when the need arises for a provider of last resort to provide any approved support (not just ‘critical’ supports)
    - participant plans have built-in flexibility for situations in which a provider of last resort is required, including the ability to access contingency funding (as recommended earlier)
    - as soon as possible, participants are transitioned back to support outside provider of last resort arrangements.

7. Justice system responses

Participants at the policy and practice roundtable noted that it is difficult to make definitive statements about what the justice response should look like following an instance of violence or abuse between co-residents because there are many variable factors, including the victim's attitude towards the matter being prosecuted. As one participant said: "too often we put the system above the individuals, but the individual should have the right to follow through [in seeking a justice response] on those incidents."

At the same time, it was suggested that the pendulum has perhaps swung too far recently towards reporting, regulation and justice responses to support the policy of zero-tolerance; the fact that we have ignored the problem for far too long does not mean that we now need to adopt a heavy-handed, penal approach. Rather than eliminating violence and abuse, this approach, together with the pressures of market competition, has the potential to supress reporting of incidents by staff.

Instead, a person-centred, trauma-informed, problem-solving approach is required. While the current guidelines are very structured, they, along with the understanding of each agency of their potential roles, need to mature to enable a more nuanced approach.

Similarly, self-advocates demonstrated a strong commitment to justice and equality but noted that the appropriate justice response will depend on the circumstances. The majority considered that, if a resident knowingly and deliberately hurt other residents, they should face a consequence in the criminal justice system. Two self-advocates expressed the view that failing to charge or punish a person simply because they had a disability constituted unequal treatment and was therefore inappropriate: just because a person has a disability, it does not mean they do not know what they are doing.

However, self-advocates also noted that there are different degrees of disability so a nuanced response is required, and that if a person did not understand or could not control their conduct, then they should not be punished.

Quotes from self-advocates on the criminal justice system response to violence in group homes

"Since we're all human, we should be treated equally and fairly."

"Some people with disabilities, the police won't take them to jail because they think it won't suit them. They still say they won't take people with disability to jail."

"People with and without disability should all be treated equally. Maybe a little bit less punishment, but still some."

"[If someone with a disability does something wrong, should they be punished in the same way?] Not necessarily – there are different degrees of disability, everyone is different."

Why it matters?

People with disability have the right to enjoy equal recognition before the law and to receive the support that they may require in exercising their legal capacity.[109] Everyone, including people with disability, has the right to be safe in their home and to expect an effective, respectful and just response if they have been subject to violence or abuse there.

A justice system that provides a nuanced response to incidents of violence and abuse in group homes contributes to a culture that does not seek to minimise violence in this setting. On the other hand, an effective justice response should rehabilitate people with disability in the criminal justice system, diminishing any harmful effects of criminalisation.

Are current justice responses working for people with disability who experience violence?

There are a range of justice responses to violence and abuse, ranging from protective orders for the person who has experienced violence to prosecution of people who perpetrate violence. Whilst there have been some welcome developments, and some individuals within the justice system do good work to support people with disability, in the context of violence in group homes the justice response can be ineffective and criminalise behaviours associated with disability. At worst, there is a failure to understand the functions of the behaviours for the person and therefore a failure to take the steps to address this so that the behaviour is not endlessly repeated.

Personal Safety Intervention Orders

Personal safety intervention orders made under the *Personal Safety Intervention Orders Act 2010* (Vic) (PSIOA) are a very blunt instrument that may have limited utility in this context.

The purpose of a personal safety intervention order is “to protect the safety of victims of assault, sexual assault, harassment, property damage or interference with property, stalking and serious threats”, as well as to “promote and assist in the resolution of disputes through mediation where appropriate.”[110]

The court can make an order prohibiting the respondent from certain conduct in relation to the applicant in certain circumstances, and it is a criminal offence to contravene an order.[111] If the person using violence has a cognitive impairment, the court may take into account the person’s ability to understand the nature and effect, and ability to comply with the conditions of the order.[112] It is unlikely that a court would make an order if the resident using violence has a cognitive impairment and is unable to understand or comply with an order, and an order in these circumstances would not serve to protect the applicant in any event. If an order is breached, the resident who experienced the violence and abuse, or someone on their behalf, would need to report the breach in order for police to respond. Agencies consulted in the preparation of this report stated that violence in group homes is so ubiquitous, and orders are of such limited utility, that it is simply not practical to apply for orders and report breaches of those orders.

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109. Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) arts 5 and 12.

110. *Personal Safety Intervention Orders Act 2010* (Vic) s 1.

111. *Personal Safety Intervention Orders Act 2010* (Vic) s 1.

112. *Personal Safety Intervention Orders Act 2010* (Vic) s 35(4) & s 61(2).

An order requiring the person using violence to leave the group home does have the potential to protect the resident who has experienced violence from further violence. People with a disability have the same right as anyone else to access such an order. This would then place pressure on the disability service sector to source alternative accommodation for the person against whom the order is directed.

The pervading view, however, is that the disability service sector is better placed to prevent violence and abuse from occurring in the first place, and to source respite accommodation and supports in the event that it occurs without the need for residents to resort to applying for an order and the consequential impacts of that on the perpetrator.

Family Violence Intervention Orders

As is the case with orders made under the PSIO Act, orders made under the *Family Violence Protection Act 2008* (Vic) (FVPA) may be of limited utility in some cases. However, there are situations in which an order under the FVPA would serve to protect the safety of the person experiencing violence who has the right to access the protections under the FVPA, notwithstanding the fact that disability services should protect residents without needing to resort to protective orders.

If a resident did wish to seek a protective order, orders made under the FVPA have a range of benefits that are not available under the PSIOA. These benefits are discussed further below.

However, violence between co-residents in group homes is rarely expressly acknowledged in, or covered by, family violence legislation and policy. The FVPA includes within the definition of 'family member':

> "any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship, including the following—
>
> > (a) the nature of the social and emotional ties between the relevant person and the other person;
> >
> > (b) whether the relevant person and the other person live together or relate together in a home environment;
> >
> > (c) the reputation of the relationship as being like family in the relevant person's and the other person's community;
> >
> > (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;
> >
> > (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;
> >
> > (f) any financial dependence or interdependence between the relevant person or other person;
> >
> > (g) any other form of dependence or interdependence between the relevant person and the other person;
> >
> > (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person;
> >
> > (i) the provision of sustenance or support between the relevant person and the other person.

Example

A relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members."[113]

Noting this definition, the Royal Commission into Family Violence recognised that family violence against people with disability includes violence by "co-residents in disability services who have a 'family-like' relationship with the victim."[114] However, despite noting the difficulties of interpreting and applying this definition in practice, the Royal Commission declined to recommend amending the definition of 'family member' in the FVPA to expressly include carers and co-residents in residential accommodation because it considered that "strengthening access to other legal remedies (such as personal safety intervention orders) is a more appropriate mechanism."[115]

Two months later, a Parliamentary Inquiry into abuse in disability settings took a different view:

> "[The] Committee believes that access to justice for people with disability can be enhanced by recognising that people living in supported residential accommodation also experience family violence. The Committee is of the view that people living in supported residential accommodation should be able to access the protections of the [FVPA]. For example, including people with disability under the Act would enable police to issue Family Violence Safety Notices, a mechanism that operates outside of court hours and can offer interim protection for people experiencing violence prior to securing a Family Violence Intervention Order. Further, amendments to the Act would increase awareness within disability services of the gravity of abuse and the need for violence within institutional settings to be treated as a criminal rather than internal matter."[116]

It should be noted that the FVPA currently prevents police from issuing a family violence safety notice if they have "reasonable grounds for suspecting the respondent has a cognitive impairment."[117] However, interim family violence intervention orders could still be sought.

The Victorian Government's response to the Parliamentary Inquiry did not specifically address the findings regarding violence between co-residents nor the recommendation to amend the FVPA to clearly cover co-residents with disability in residential settings.[118] The Victoria Police *Code of Practice for the Investigation of Family Violence*[119] does not mention nor address situations of violence between group home co-residents either.

When considering the concept of family-like relationships under the FVPA, self-advocates identified many parallels between family relationships and the relationships they had with their co-residents. However, most self-advocates preferred not to think of or label their co-residents as family, often because they were not close to them or did not get on with them. Some indicated that the staff felt more like family to them than their co-residents. Nevertheless, while they may not consider violence and abuse between co-residents to be family violence, when one self-advocate called it domestic violence, the others agreed. They also felt that people experiencing violence or abuse from co-residents should be able to access the special protections available under the FVPA.

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113. *Family Violence and Protection Act 2008* (Vic)s 8(3).

114. Royal Commission into Family Violence (Victoria), *Report and Recommendations* (2016) vol 5, 167.

115. Ibid 192.

116. Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Settings* (2016) 170.

117. *Family Violence and Protection Act 2008* (Vic) s 24(b).

118. Martin Foley, Minister for Housing, Disability and Ageing (Vic), 'Zero Tolerance of Abuse of People with a Disability: Response to the Inquiry into Abuse in Disability Services' (Ministerial statement, November 2016)

119. Victoria Police, *Code of Practice for the Investigation of Family Violence* (2019).

Quotes from self-advocates on the use of intervention orders in situations of violence in group homes

"It's domestic violence."

There are benefits that flow from violence and abuse between co-residents being considered family violence. While residents in group homes may be able to access other legal remedies such as personal safety intervention orders, remedies within the family violence system enable access to a range of additional protections and services. As identified by the Family and Community Development Committee, coming within the protections of the FVPA would enable police to issue Family Violence Safety Notices offering interim protection outside of court hours for people experiencing family violence.

A person who experiences family violence is also eligible to access a range of specialist family violence support services and funding, noting however that some of these services are only available to women. Family violence services provide information, referrals, advocacy and support to victim survivors.[120] For example, the Family Violence Flexible Support Package Initiative provides "victim survivors with access to the funding they need to move out of crisis, stabilise and improve their safety, wellbeing and independence."[121] At this stage, the program is funded until 2020. Similarly, the Family Violence Restorative Justice (FVRJ) Service "facilitates restorative conversations for victim survivors of family violence."[122]

While the family violence sector is becoming more responsive to the needs of people with disability as a result of recent initiatives, such as the Family Violence Flexible Support Package Initiative and the review of contractual arrangements for crisis supported accommodation to remove barriers for particular groups including women and children with disabilities,[123] anecdotal evidence suggests that it does not have the capacity to respond to the unique and complex needs of residents in group home settings. For example, disability housing options are generally foreign to family violence staff, and, as a result, those staff may be unaware of the level or risk associated with various options. Funds that are available to support women fleeing violence are inadequate to provide for disability supports for a woman with disability.

The government has committed more than $2.7 billion to implement all 227 recommendations made by the Royal Commission into Family Violence, but the sector remains under pressure on the ground and is not responsive to the needs of people with disability in group home settings. The sector should be funded to ensure that all workers undertake disability awareness training, and where relevant, training on the disability services landscape, to ensure that services are accessible to, and meet the needs of people with a disability.

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120. See for example WAYSS Ltd, *Family Violence Outreach Program*, <https://www.wayssltd.org.au/how-we-can-help/family-violence-outreach-program>

121. Victorian Government, *Funds to support victims of family violence* <https://www.vic.gov.au/funds-to-support-victims-of-family-violence>

122. Department of Justice and Community Safety Victoria, *Restorative justice for family violence*, <www.justice.vic.gov.au/fvrjservice>

123. Victorian Government, Review contractual arrangement for crisis supported accommodation to remove barriers for particular groups <>https://w.www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation_id=44

Residents in group homes who experience violence should be entitled to rely on the provisions of the FVPA, and the provisions of the FVPA should be amended to ensure that residents in group homes are able to access those protections, yet it remains that disability service providers are better placed to source safe respite accommodation (for the victim or the perpetrator) in these instances. Those services could potentially benefit from secondary consultations and support from family violence services. This approach, however, requires a timely response to crisis by the disability sector, together with sufficient safe housing options for people in these circumstances, neither of which are currently available. It also requires collaboration between the two sectors, which is not explicitly funded in the NDIS model and consequently, is more difficult than ever before.

Are current justice responses working for people with disability who engage in violence?

The practice and policy roundtable participants considered that resident-to-resident violence is a failure of the disability service system not the criminal justice system, so, as one participant said: "a justice response represents a systemic failure of support to people with disabilities." A safety net of effective early intervention responses is needed to prevent (the escalation of) incidents. The bedrock of early intervention is positive behaviour support, with multi-agency involvement, which needs to be properly funded in NDIS plans.

Notwithstanding the right of people who are subjected to violence and abuse to access the same legal remedies as anyone else, the criminalisation of behaviours associated with disability can have devastating and enduring consequences for the person concerned and the community more broadly.

Personal Safety and Family Violence Intervention Orders

OPA and Community Visitors are aware of cases where intervention orders (IVOs) in these situations, whether under the FVPA or the PSIOA, have been made. Indeed, a co-resident obtained an interim intervention order against Sam.

Most self-advocates had heard of IVOs, but none could recall seeing one used in this context. Community Visitors, on the other hand, have observed IVOs between residents who are living in the same house. Orders usually apply both at home and in social venues, posing challenges for the staff in managing contact between the affected residents and providing support to all residents, particularly if there are severe restrictions imposed on the interactions between particular residents. The Independent Third Person (ITP) Program has seen a 170 per cent increase, over one year, in the number of IVO breach interviews.[124]

As discussed above, it is unclear how effective or appropriate IVOs are in circumstances of violence between residents in group homes, as there are a number of impediments to relocating both victims and perpetrators (as explained in previous chapters). IVOs are likely to be blunt instruments to effect behavioural change in the absence of proper supports, especially in situations where inadequate support has contributed to the behaviours in question. In these cases, IVOs are unlikely to achieve their intended statutory purposes of preventing and reducing family violence and maximising safety for those who have experienced it.[125]

124. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 47.

125. *Family Violence and Protection Act 2008* (Vic)ss 1(a), (b).

A further statutory purpose of the FVPA is to promote the accountability of perpetrators of family violence.[126] Given this, IVOs can have serious, sometimes devastating, consequences for people with disability. Contravening an IVO is a criminal offence which attracts penalties of up to two years' imprisonment[127] or five years in the case of certain aggravated or persistent contraventions.[128] This is in response to what is often, as in Sam's case, a failure of the disability support system to ensure that the person has choice and control over decisions that affect them, and adequate support.

In deciding whether it is appropriate to make an IVO, the FVPA, unlike the PSIOA,[129] does not require the court to take into account the respondent's ability to understand the nature and effect of the final order and comply with its conditions where the respondent has a cognitive disability. There is a risk that people with cognitive disability maybe subject to IVOs which they do not fully understand and/or are unable to comply with, in which case it is likely that they will breach the order, resulting in criminalisation and other negative consequences.

For example, the Victorian Ombudsman recently reported on the case of a woman who had breached a family violence IVO but was found unfit to be tried due to her complex disability. Nevertheless, she was detained on remand for 18 months and spent much of that time in solitary confinement for up to 23 hours a day, which had an extremely damaging and distressing impact, before appropriate supports could be arranged to enable her release.[130]

In June 2019, the Coroner's Court handed down findings following the death of another woman with intellectual disability and borderline personality disorder who had been remanded in custody after breaching a family violence IVO by attending at her parents' house; her mental health deteriorated significantly while she was in custody and she died five days after her release on bail.

The Coroner found that the woman "did not grasp the conditions and consequences of breaching an IVO" and considered the use of IVOs against people with intellectual disability to be 'problematic'.[131] He quoted with approval OPA's "compelling"[132] submissions that making IVOs where the respondent has a cognitive impairment and is unable to understand the nature and effects of that order or comply with its conditions is inconsistent with the purposes of the FVPA and may also breach the respondent's rights to equal recognition and equality before the law.[133]

Acknowledging that judicial officers dealing with people who repeatedly breach IVO conditions are placed in an impossible situation, the Coroner also considered that non-custodial options must first be exhausted.[134] He recommended the Attorney-General review the FVPA and give consideration to including provisions that would encourage or require courts, in deciding whether it is appropriate to make a final order, to take into account the respondent's ability to understand the nature and effect of the final order and comply with its conditions where the respondent has a cognitive disability, to help reduce the likelihood of them breaching the order and being subject to criminal proceedings, remanded in custody or incarcerated.[135]

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126. *Family Violence and Protection Act 2008* (Vic)s 1(c).

127. And/or a fine of up to 240 penalty units: *Family Violence and Protection Act 2008* (Vic)s 123(2); Personal Safety Intervention Orders Act 2010 (Vic) s 100(2).

128. And/or a fine of up to 600 penalty units: *Family Violence and Protection Act 2008* (Vic)ss 123A(2), 125A(1).

129. P*ersonal Safety Intervention Orders Act 2010* (Vic) ss 35(4), 61(2).

130. Victorian Ombudsman, *Investigation into the Imprisonment of a Woman found Unfit to Stand Trial* (2018).

131. Coroner's Court of Victoria, *Finding into Death with Inquest*, COR 2013 2883 (6 June 2019) 11.

132. Ibid 12.

133. Ibid 14-17.

134. Ibid 12.

135. Ibid 21.

While the women in these cases were not residents of group homes, the cases are illustrative of the issues that impact on the effectiveness of these remedies in the group home context.

Police and policing responses

Notwithstanding the Victorian Government's explicit policy of zero-tolerance towards abuse of people with disability, it is a conundrum whether criminal prosecutions for other offences, such as assault, are effective and appropriate in these circumstances.

Community Visitors have observed that incidents of violence between residents rarely result in the sort of protective responses that are expected in family violence situations. Even when abuse is reported to police, it often does not proceed further due to lack of evidence or an assessment by police that there would not be a reasonable prospect of the prosecution being successful. Police may be unable to take a statement due to communication barriers or it may be because the affected residents are unable to communicate or advocate for themselves. In some instance, it may be that incidents are not witnessed other than by the affected persons. This raises the questions why people are not believed. In many cases, poor incident reporting prevents police and Community Visitors from providing thorough follow-up.

Case Story 12 from Community Visitors[136]

There have been numerous incident reports about a resident with an acquired brain injury, epilepsy and some neurological decline who was aggressive towards other residents. The resident was sharing a unit with one other person, and in one incident, was alleged to have poured boiling water over another resident. An ambulance was called, and the incident reported to police. No action was taken by police.

The victim went home to live with his 84 year-old mother and his family wants the person who assaulted him relocated so he can return to the unit. The lack of suitable accommodation alternatives has led to this situation remaining unresolved for over a year.

Victoria Police face many challenges in delivering effective and equitable services to people with disability, including in the context of violence and abuse in group homes. These challenges include:

- a lack of awareness of, difficulty recognising, and discriminatory attitudes towards disability by some police members
- a lack of understanding of family-like relationships in the group home context (in this regard, the recently updated family violence form used by Victoria Police now includes two questions about disability which may prompt members to make further inquiries)
- making inaccurate assessments about the legal competence of people with disability
- problems with interviewing and questioning techniques
- underutilisation of diversion mechanisms, sometimes because of apparent lack of resources
- the trajectory of each case often being set by decisions made at the first point of contact and being difficult to shift thereafter
- police being trained to take control of the situation, which is not always the most appropriate response
- bail reforms having negative outcomes for people with disability or who are otherwise vulnerable (for example, inadequate supply of disability housing results in people with disability being remanded in custody for relatively minor offences)

136. Office of the Public Advocate (Victoria), *Community Visitors Annual Report 2018-2019*, 34.

- a lack of understanding of systems issues, for instance that a person's involvement in the criminal justice system could affect their support arrangements that are now governed by the NDIS and
- gaps and limitations in data collected, including failure to identify or record a person's disability, which makes it difficult to measure progress.

The justice system should generally take a diversionary approach in these cases. While police need to respond to acute crises and keep people safe, they should distribute responsibility back to a range of agencies to address the underlying issues through behavioural interventions, environmental modifications and other strategies.

Is the justice system accessible for people with disability?

A range of initiatives is underway but there is more work to be done to ensure that the justice system is accessible for people with disability and complex needs. It is important that people with disability are supported to engage with and access the justice system to ensure they enjoy equality before the law and equal access to justice. This is not currently the case despite forming part of Australia's obligations under the UN Convention.

In addition to the provision of support to individuals, the justice system must make reasonable adjustments to ensure accessibility for all users. While there are a number of commendable pilots and projects underway, some mentioned further below, the system is not accessible to people with disability.

Workforce training

It is also important to ensure that all communications are accessible and appropriate for a person with disability interacting with the justice system. All justice system personnel need comprehensive training so that they know how to communicate with people with disability and can make appropriate adjustments.

Victoria Police Disability Liaison Officers

Participants at the roundtable noted that established relationships with local police are key. From later this year, a police member from each region will be appointed as 'disability liaison officer'. As well as providing a single point of contact, their role will be to understand and help members translate policy into practice. However, these roles will be assigned to operational police members on top of their existing responsibilities, which raises concerns about the extent to which they would actually have capacity to take up the opportunities and embed the system-wide change that the roles were designed to achieve. The program should be resourced to ensure that there are sufficient numbers of disability liaison officers across the police force, and that those officers are provided the resources and support that they need to undertake this role.

Communication Intermediaries pilot

A Communication Intermediaries pilot has operated in Victoria from 1 July 2018 and will continue until 30 June 2020, which aims to facilitate vulnerable witnesses, including people with complex communication needs and people with a cognitive impairment, to give their best evidence in court. An intermediary is a communications professional who assesses the witness's communication needs and advises the court on strategies to help the witness give their best evidence.[137] The pilot applies to a limited type of criminal proceedings at court venues.

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137. County Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearing*, (2018).

Independent Third Person Program

OPA's ITP Program trains volunteers to provide support in police interviews to alleged offenders, victims, and witnesses of all ages who have a cognitive impairment such as an intellectual disability, mental illness or an acquired brain injury. Police interviews often require people to comprehend complex issues and information quickly, understand their legal rights, and be able to communicate with people in positions of authority. ITPs are trained to support and assist victims, witnesses and alleged offenders during the interview process. They are available 24 hours and 7 days a week to attend any police station throughout Victoria. They are independent of the police process and do not instruct a person on how to deal with the issue they are facing nor do they provide legal advice.

The primary role of the ITP is to facilitate communication between the person and the police. It is also part of their role to assess if the person understands and can exercise their rights, and to advise the police accordingly after their pre-interview with the person. The ITP Program assists police in their interviews with people with cognitive impairment through training and co-development of resources. OPA has welcomed the positive working relationship it has developed with Victoria Police.

ITPs support some of the most vulnerable people in the community with over 80 per cent of clients having a disability and 12 per cent having two or more disabilities. Their involvement in the criminal justice system often adds to a very complex life situation and can often exacerbate their vulnerability. In 2018-2019, 193 ITPs attended 3222 interviews assisting 2278 clients. Alleged offender interviews made up the largest group at 81.7 per cent.

OPA's 2012 report *Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System* states that:

> "Not involving an ITP could compromise the integrity of the evidence raised in the interview. On this point, case law recognises the importance of ITPs in protecting the rights of people with disabilities during the police interview. For example, the Supreme Court of Victoria has held that the failure of police to use an ITP when one is required may diminish the credibility of any evidence obtained in that interview. This is because the absence of an ITP raises serious questions regarding the 'propriety, reliability and fairness' of the police interview. Accordingly, Victoria Police policy requires that members arrange for an ITP to be present during the interview with any person whom they believe may have a cognitive impairment or mental illness."[138]

The ITP Program plays a critical role in giving effect to the right of people with disability access to justice, which includes the "provision of procedural accommodations in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."[139]

This level of legislative protection for people needing an ITP would be consistent with the legislative right for young people to have access to the support of an independent person in police interviews.[140]

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138. Office of the Public Advocate (Victoria), *Breaking the Cycle* (2012) 19.

139. Ibid.

140. *Crimes Act 1958* (Vic) s 464E.

Similarly, the service currently provides ITP support to people attending a police interview, when people with disability would benefit from the support of an ITP while engaging with the court process. The current role of the ITP is also limited to the conduct of the interview; however, ITPs often see people with disability in their first contact with the criminal justice system and therefore are well placed to identify support needs and systemic issues and make referrals. The involvement of an ITP, including the capacity to make referrals, would assist a range of people with cognitive impairment in police interviews to be supported to prevent further contact with the criminal justice system.

What needs to change?

Amend the Family Violence and Protection Act 2008 (Vic)

While protective orders are not considered the preferred response to violence in group homes, it is important that residents of group homes are able to access these protections if they elect to do so. To ensure that residents can access the protections under the FVPA as well as the associated services and supports, the FVPA should be amended to make it clear that co-residents in group homes constitute 'family-like relationships' for the purposes of the Act. Resorting to an IVO to remove someone from their home and to push the disability service system to respond to incidents of co-resident violence was not seen as the best method of handling these situations. Nonetheless, recognising violence between group home co-residents as family violence would be beneficial because it would enable victims to access a wide range of family violence services and supports such as crisis and emergency accommodation. These are currently being redesigned to reduce barriers for people with disability as part of the Victorian Government's commitment to implement all 227 recommendations from the Royal Commission into Family Violence.[141] Female victims may also be able to access additional supports through the Disability Family Violence Crisis Response initiative.[142]

Fund independent advice and advocacy

Additional to the response of the justice system, access to independent advice and advocacy (both legal and non-legal) is essential to help people navigate systems, access services, and decide what options to pursue.

A roundtable participant also noted that the justice system is broader than the criminal justice system and includes civil justice and restorative justice responses (see below). Group home residents who have been victims of violence or abuse should be supported to make a claim to the Victims of Crime Assistance Tribunal (VOCAT), noting that claims can be brought even where the alleged perpetrator has not been charged, provided the matter has been reported to police.

Upskill the disability, family violence and justice system workforce

Family violence workers are under resourced and family violence services are generally inaccessible for people with a disability. It is imperative that family violence workers receive training on disability awareness, together with training on the disability service sector, as a matter of urgency. Similarly, many disability services staff are unfamiliar with how to identify and respond appropriately to family violence. Disability services staff should undertake professional development to build the sector's capacity to identify family violence and managers should undergo training on managing family violence in disability residential settings.

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141. Victorian Government, *Review contractual arrangements for crisis supported accommodation to remove barriers for particular groups* (1 May 2018).

142. Department of Health and Human Services (Victoria), *Disability and family violence crisis response* (16 January 2019) <https://providers.dhhs.vic.gov.au/disability-and-family-violence-crisis-response>.

All justice system personnel should also be provided with comprehensive training so that they know how to communicate with people with disability. In order to make the appropriate adjustments, it is essential that justice personnel have an understanding of cognitive impairment to know how it may present differently, and how people may be impacted differently by the nature of their impairment. The training should be developed and delivered by or in consultation with people with disability.

There has been some work done in this regard. Scope (Australia) and Victoria Police worked in partnership from 2017 to 2019 to successfully accredit Box Hill and Geelong Police Station's Watch Houses with the Communication Access Symbol.

Outcomes of the project include:

- increased customer satisfaction of people with communication disabilities, who co-designed and delivered this project
- increased skills, knowledge and confidence of Victoria Police uniform members when initially interacting with people with communication disabilities and
- the award of the Communication Access Symbol at Box Hill and Geelong Police Stations.

Uniform police at the two stations were proactive in both recognising the immediate need and in welcoming the opportunity to increase their capabilities to initially engage with people with communication disabilities.

Communication intermediaries

The Communication Intermediaries pilot is being evaluated, and, if the evaluation shows the pilot project to be successful, the Victorian Government should expand the scheme to include all proceedings in all courts and tribunals, particularly in family violence matters. This is consistent with the UN Convention, specifically articles 12 and 13, that states that all people with cognitive impairment, whether they are victims or perpetrators of violence, should have the right to access a communication intermediary.

Independent Third Person Program

Legislative protection is essential to ensure that all people with cognitive impairment are afforded procedural accommodations in order to facilitate effective access to, and engagement with the justice system, at all stages of legal proceedings including at investigative and other preliminary stages. Legislating the Program would also ensure it is appropriately resourced to unfailingly deliver its intended purpose.

The role of the ITPs should also be expanded to enable them to assist vulnerable people to access services and support, particularly as this is likely to reduce or even end their engagement with the justice system.

Restorative justice

While increasingly used in a range of other complex situations, for example in the family violence context,[143] restorative justice offers a completely untapped approach when it comes to dealing with harm caused between group home co-residents. Restorative justice processes bring all affected parties together, recognise the harm done and take an inclusive and problem-solving approach to repairing the harm and addressing the violence.

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143. Family Violence Restorative Justice Service <www.justice.vic.gov.au/fvrjservice>

By talking with people affected and those that support them, interesting and unexpected solutions can be generated which are not solely in the purview of the legal system. This would also give residents more choice and control and a real role in deciding how their needs can be met, in line with the NDIS Act principles and government responsibilities under the UN Convention. Restorative justice therefore has the potential to be very effective in this space, provided appropriate accommodations are made to support participants with cognitive disability and their safety is ensured. The new Victoria Police disability liaison officers could also potentially participate.

Some positive developments have already occurred following discussions at the roundtable. Of particular significance, the Centre for Innovative Justice and Yooralla have agreed to work together with OPA on a pilot group home restorative justice project.

Collaborate to minimise unnecessary criminalisation of people with disability

There are some parallels between the issue of violence by group home residents and the challenge of responding to (potentially) criminal conduct by young people living in out-of-home care. Following a concerted advocacy campaign, a new agreement between DHHS, the Department of Justice and Community Safety, Victoria Police and the Centre for Excellence in Child and Family Welfare is anticipated shortly, which aims to minimise unnecessary and harmful criminalisation of young people, who are clearly living in difficult circumstances, for often minor misconduct. It may be helpful to draw ideas from this agreement once released.

Key recommendations

Justice system responses

27. The Victorian Government should seek to amend the *Family Violence and Protection Act 2008* (Vic) to:
    - explicitly state that co-residents in SDA accommodation are in ‘family-like relationships’ for the purposes of the Act and
    - ensure that, before making a Family Violence Intervention Order, the court is required to consider whether the respondent is able to understand the nature and effect of the order and comply with its conditions.
28. The Victorian Government should expand funding for legal and non-legal advice and advocacy to help people with disability to navigate and access the justice system.
29. The Victorian Government should ensure that outreach and advocacy supports are available to assist people with disability who have been victims of crimes to bring claims before the Victims of Crime Assistance Tribunal.
30. The Victorian Government should fund mandatory disability awareness training for all staff in the family violence sector. The training should be developed in consultation with people with disability.
31. The Victorian Government should expand funding for mandatory family violence training for disability workers.
32. The Victorian Government should fund mandatory disability awareness training for all justice staff to enable them to fulfil their obligations under the United Nations’ *Convention on the Rights of Persons with Disabilities*. The training should be developed in consultation with people with disability.
33. The Victorian Government should encourage all Victorian Police stations to apply for the Communication Access Symbol accreditation.
34. Victoria Police should increase the capacity and availability of its disability liaison officers.
35. The Victorian Government should consider the evaluation of the Communication Intermediaries pilot, and, if it proves successful, should continue and expand the scheme to:
    - be available at all proceedings in all courts and tribunals, particularly family violence matters
    - be available for victims and alleged perpetrators.
36. The Victorian Government should introduce legislative reform to require Victoria Police to have an Independent Third Person (ITP) present when interviewing a person with a cognitive impairment or mental illness, irrespective of age. This should include alleged offenders, victims, and witnesses.
37. The Victorian Government should expand the role of the Independent Third Person program to:
    - provide support in hearings in courts and tribunals
    - provide referrals to service and support agencies.
38. The Victorian Government should pilot the use of restorative justice processes in situations where violence has occurred in SDA settings.

8. Next steps

Moving forward, OPA will continue to work with people with disability, key allies and stakeholders to pursue systemic changes to improve the prevention of, and response to, violence and abuse between group home co-residents, including by:

- disseminating this report and encouraging other agencies to draw on the evidence and ideas presented here, especially the views of people with lived experience;
- advocating to the relevant agencies and departments for the implementation of the recommendations made in this report; and
- providing evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Abbreviations

CAV	Consumer Affairs Victoria
CoS	Continuity of Supports
CSO	Community Service Organisation
DHHS	Department of Health and Human Services
DWES	Disability Worker Exclusion Scheme
FVPA	*Family Violence Protection Act 2008* (Vic)
ITP	Independent Third Person
IVO	Intervention Order
LAC	Local Area Coordinator
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	*National Disability Insurance Scheme Act 2013* (Cth)
OPA	Office of the Public Advocate
PSIOA	*Personal Safety Intervention Orders Act 2010* (Vic)
RTA	*Residential Tenancies Act 1997* (Vic)
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
SRS	Supported Residential Service
STAA	Short Term Accommodation Assistance
UN Convention	United Nations' *Convention on the Rights of Persons with Disabilities*

Appendix 1

Legislative context

Human rights and equality

Australia ratified the United Nations' *Convention on the Rights of Persons with Disabilities*[144] in 2008. Among other things, the UN Convention affirms the rights of persons with disability to:

- equality and non-discrimination[145]
- equal recognition before the law[146]
- access to justice[147]
- freedom from violence and abuse[148] and
- independent living.[149]

The *Disability Act 2006* (Vic) provides a legislative scheme for persons with a disability which affirms and strengthens their rights and responsibilities based on the recognition this requires support across the government sector and within the community.[150] It affirms that persons with disability "have the same rights and responsibilities as other members of the community and should be empowered to exercise [them]."[151] Some objectives of the Disability Act are to:

- "advance the inclusion and participation of in the community of persons with a disability
- promote a strategic whole of government approach in supporting the needs and aspirations of persons with a disability and
- promote and protect the rights of persons accessing disability services."[152]

In August 2017, new principles were inserted into the Disability Act stating that disability services should:

- "be provided in a manner that promotes the upholding of the rights, dignity, wellbeing and safety of persons with a disability and
- be provided in a manner that does not—
    - tolerate abuse, neglect or exploitation of persons with a disability or
    - normalise abuse, neglect or exploitation of persons with a disability."[153]

144. Convention on the Rights of Persons with Disability, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

145. Ibid art 5.

146. Ibid art 12.

147. Ibid art 13.

148. Ibid art 16.

149. Ibid art 19.

150. *Disability Act* s 1(a).

151. *Disability Act* s 5(1).

152. *Disability Act* ss 4(a), (b), (d).

153. *Disability Act* ss 5(3)(ma), (mb).

The following Acts also protect the rights of people with disability:

- *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- *Equal Opportunity Act 2010* (Vic)
- *Disability Discrimination Act 1992* (Cth).

Disability services, supports and accommodation

The *National Disability Insurance Scheme Act 2013* (Cth) aims to "enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports."[154] It provides for individualised funding packages to eligible people ('participants') to purchase 'reasonable and necessary'[155] supports (including, potentially, specialist disability accommodation, SDA). It also establishes the NDIS Quality and Safeguards Commission to improve the quality and safety of NDIS supports and services.

The NDIS Act is supported by various rules, including the following:

- The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) incorporate the NDIS Practice Standards, which establish the national standards and expectations of registered NDIS providers.
- The *National Disability Insurance Scheme (Code of Conduct) Rules 2018* (Cth) set out the NDIS Code of Conduct that applies to all NDIS providers and persons employed or otherwise engaged by them. The Code contains seven elements, including the requirements to:
    - "act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions...
    - act with integrity, honesty and transparency…
    - promptly take steps to raise and act on concerns about matters that may impact on the quality and safety of supports and services provided to people with disability
    - take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability and
    - take all reasonable steps to prevent and respond to sexual misconduct."[156]
- The *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) require all registered NDIS providers to manage certain incidents which happen in connection with providing supports or services to people with disability and sets out the decisions and actions which the NDIS Quality and Safeguards Commission can take in relation to a reportable incident.
- The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Cth) relate to the funding and provision of SDA.

Part 5 of the Disability Act regulates residential services, including procedures to temporarily relocate or evict group home residents. However, from July 2019, a new Part 12A of the Residential Tenancies Act 1997 (Vic) defines the rights and duties of SDA residents and providers and includes new procedures to temporarily relocate or evict SDA residents.

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154. *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(e).

155. *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(d).

156. *National Disability Insurance Scheme (Code of Conduct) Rules 2018* (Cth) rr 6(a), (d)-(g).

Justice responses

The *Family Violence Protection Act 2008* (Vic) provides for the making of intervention orders and other responses to violence between family members and people in family-like relationships.

The *Personal Safety Intervention Orders Act 2010* (Vic) provides for the making of intervention orders in other contexts.

The *Crimes Act 1958* (Vic) and *Summary Offences Act 1966* (Vic) establish criminal offences relating to violence and abuse.

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) sets out alternative judicial processes and outcomes where a person is unable to be tried or held criminally responsible for their actions because of, typically, the impact of disability.

Policy context

With the *National Disability Strategy 2010-2020*, all Australian government jurisdictions committed for the first time to a "national approach to supporting people with disability to maximise their potential and participate as equal citizens in Australian society… and to providing leadership for a community-wide shift in attitudes."[157] The strategy includes the following key policy directions:

- people with disability are safe from violence, exploitation and neglect
- people with disability have access to justice and
- more effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities.[158]

It also identifies the following as areas for future action:

- "develop strategies to reduce violence, abuse and neglect of people with disability
- provide greater support for people with disability with heightened vulnerabilities to participate in legal processes on an equal basis with others and
- support people with disability with heightened vulnerabilities in any contacts with the criminal justice system, with an emphasis on early identification, diversion and support."[159]

The *NDIS Quality and Safeguarding Framework* provides a "nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place and establishes expectations for providers and their staff to deliver high quality supports."[160] Its objectives are:

- "uphold the rights of people with disability, including their rights as consumers
- ensure NDIS funded supports are safe and fit for purpose
- allow participants to live free from abuse, violence, neglect and exploitation."[161]

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157. Department of Social Services (Australia), *National Disability Strategy 2010-2020* (2017) <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020>.

158. Ibid 38-39 (policy directions 4, 3 and 5).

159. Ibid 41.

160. Department of Social Services (Australia), *NDIS Quality and Safeguarding Framework* (2016).

161. Ibid, 11.

Absolutely Everyone: State Disability Plan 2017-2020[162] is Victoria's third disability plan. It sets out the government's commitment to and plan for "achieving greater inclusion… [and] tackl[ing] the negative attitudes and barriers that more than one million Victorians with a disability deal with on a daily basis."[163] Action 19 commits to "building a culture of zero tolerance of abuse in disability services."[164]

Victoria's *Disability Abuse Prevention Strategy*[165] builds on the commitments in the State Disability Plan and aims to strengthen safeguards for people with disability during transition to the full rollout of the NDIS. 'Abuse' is broadly defined in the Strategy to include physical, sexual, emotional and financial abuse, including by a person with disability towards another person with disability.[166] It outlines a range of initiatives to build the capacity of individuals, workers and the sector to better understand, report and respond to abuse.

The *Disability Abuse Prevention Strategy* is supported by DHHS' *Code of Conduct for Disability Service Workers: Zero Tolerance of Abuse of People with a Disability*,[167] which contains five obligations that all disability support workers must abide by. Obligation 2 requires disability service workers to report any form of abuse or suspected abuse to their supervisor or manager.[168] Disability service providers must also follow DHHS' *Client Incident Management Guide*,[169] which describes the actions and responsibilities of service providers and DHHS during the management of incidents, and *Responding to Allegations of Abuse involving People with Disabilities: Guidelines for Disability Service Providers and Victoria Police*[170] *('Guidelines'*; see 'Responding to and reporting allegations of violence and abuse' above).

As well as the *Guidelines*, Victoria Police must follow the *Code of Practice for the Investigation of Family Violence*[171] and the *Code of Practice of the Investigation of Sexual Crime*[172] if applicable.

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162. Department of Health and Human Services (Victoria), *Absolutely Everyone: State Disability Plan 2017-2020* (2017) <http://www.statedisabilityplan.vic.gov.au>..

163. Ibid.

164. Ibid 46.

165. Department of Health and Human Services (Victoria), D*ignity, Respect and Safer Services: Victoria's Disability Abuse Prevention Strategy* (2018).

166. Ibid 4.

167. Department of Health and Human Services (Victoria), *Code of Conduct for Disability Service Workers: Zero Tolerance of Abuse of People with a Disability* (2018).

168. Ibid 2.

169. Department of Health and Human Services (Victoria), *Client Incident Management Guide: Client Incident Management System* (2017).

170. Department of Health and Human Services (Victoria) and Victoria Police, *Responding to Allegations of Abuse involving People with Disabilities: Guidelines for Disability Service Providers and Victoria Police* (2018).

171. Victoria Police, *Code of Practice for the Investigation of Family Violence* (2019).

172. Victoria Police, *Code of Practice of the Investigation of Sexual Crime* (2016).

Appendix 2: Invitation to the first lived experience consultation

Some people with disability live with other people in group homes. The people who live together are called residents.

Sometimes the residents get on well together.

Sometimes they don't get on.

Sometimes, one resident hurts another resident. They may:

- be violent - hit or hurt the person
- be abusive - say mean things or make them do something they do not want to do
- make them feel scared or unsafe.

They may do this to one other resident or to lots of other residents.

They may do this one or lots of times.

When one resident hurts or scares another resident, there are people who can help:

VALiD

- other residents

- an advocate
- Community Visitors

- a support worker
- the housing manager

- police

- family

Sometimes, nobody helps and the person keeps hurting other residents. When this happens, it is bad for everyone.

All people should feel safe in their homes.

The Public Advocate's job is to protect your rights. She wants to know what people with disability thank about violence and abuse between residents in group homes. Some questions she might ask are:

Why do some residents hurt other residents?

How can we stop residents from hurting other residents?

What should happen if a resident hurts another resident?

- Who should do something?
- What should they do?
- Should the person have to move out?

What would make other residents feel safe again, after they have been hurt or scared in their home?

There will be a meeting where you and other people with disability can say what you think about these things.

This will help the Public Advocate and other people know the best way to make sure that people with disability:

- are safe in their homes
- are treated fairly
- have the supports they need.

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