

INQUIRY INTO SUPPORT PROVIDED TO VICTIMS OF CRIME

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Inquiry into support provided to victims of crime

Office of the Public Guardian submission

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About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in the child protection system or staying at a visitable site.

OPG promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through the following functions:

- The guardianship function undertakes structured (supported and substitute) decision-making in relation to personal matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigations function investigates allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.
- The community visiting function independently monitors visitable sites (authorised mental health services, the Forensic Disability Service, places where specified NDIS participants reside, residential services with level 3 accreditation (boarding houses/hostels), and other places prescribed by regulation), to inquire into the appropriateness of the site and facilitate the identification and escalation of complaints for resolution by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, OPG will support the person to express their views and wishes and participate and make decisions where possible.

OPG also provides individual advocacy services to children and young people through the following functions:

- child advocacy, which offers person-centred advocacy for children and young people in the child protection system, and elevates the voice and participation of children and young people in decisions that affect them, and
- community visiting, which monitors and advocates for the rights of children and young people in the child protection system including foster, kinship and residential care, and all children and young people staying at other visitable locations (youth detention centres, police watch houses, authorised mental health services and other residential facilities).

OPG provides an entirely independent voice for children and young people to raise concerns and express their views and wishes. When performing these functions, OPG will seek and take into account the views and wishes of the child to the greatest practicable extent.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an advance health directive or an enduring power of attorney.

Position of the Public Guardian

The Public Guardian welcomes the opportunity to provide a submission to the inquiry into support provided to victims of crime. The views of the Public Guardian contained in this submission do not represent the views of the Queensland Government.

This submission raises issues relating to OPG's clients who are vulnerable to becoming victims of crime and their experiences as victims of crime, as well as proposing solutions to the problems OPG has identified through its service delivery. A summary of the Public Guardian's recommendations appears below.

The Public Guardian recommends:

1. Training for police officers on identifying a person who may be experiencing impaired decision-making capacity when reporting a crime and how to source appropriate support specific to the victim's communication needs.
2. Targeted support for people with impaired decision-making capacity who are victims of crime at all stages of the legal process to ensure they can pursue legal action against perpetrators and obtain justice from the courts.
3. Adults with impaired decision-making capacity must be kept informed and included in an appropriate and timely way throughout each stage of the justice process in a manner suitable to their individual communication needs.
4. That resources be dedicated to producing and distributing accessible information to people with impaired decision-making capacity that is suitable to their communication needs on what to do if they have been the victim of a crime.
5. The development of a multi-agency approach to support victims of crime that is specific to the needs of people with impaired decision-making capacity.
6. That strategies be developed that specifically target the shortage of accessible emergency accommodation for people with impaired decision-making capacity.
7. Consider ways to better support children in court processes who have been in the child protection system, and children with disabilities, who are victims of crime. Strategies could include:
 - an assessment of the need for victims to repeatedly recount their version of events, and
 - an increase in victim liaison officers with appropriate trauma informed training.
8. That consideration be given to allowing for online and phone applications to be made for assistance through Victim Assist.

Adults with impaired decision-making capacity

Vulnerability to crime

Adults with impaired decision-making capacity are disproportionately victims of abusive or violent crime. Their various impairments, such as physical and cognitive limitations, coupled with a diminished understanding of their rights and a reliance on support systems, makes them targets for crime, including physical and financial abuse. This is particularly problematic when a family member or carer is the perpetrator and the person with impaired decision-making capacity is reluctant to report abuses due to

fear of reprisal. This fear is compounded for people with communication difficulties who may not have the communication tools to contact police to report a crime.

Credibility

OPG has observed instances of discrimination against people with a disability within the criminal justice system when their credibility as a witness is called into question when reporting a crime, be that to a member of their support network or to the police. Based on OPG's experience, there is community stigma and lack of police training on the reliability of adults with impaired decision-making capacity as witnesses and a lack of support to have their stories about abuse communicated and believed. Police can lack understanding that behaviours displayed by an adult with impaired decision-making capacity are attributable to their impairment (such as an acquired brain injury) or a side effect of certain medications. A victim in this situation faces having their credibility called into question and their allegation not taken seriously based on behaviours associated with their disability. This can act as a further deterrent for victims to approach police for fear their reports of abuse will not be acknowledged or actioned.

It is critical that people with impaired decision-making capacity be provided with a support person to assist them to communicate any experiences of abuse. This requires training by police to be able to firstly identify a person with impaired decision-making capacity who may need additional support to report abuse, coupled with the resources to be able to source the necessary support specific to the victim's communication needs.

Court processes

OPG has observed a notable lack of appropriate and readily available support for persons with impaired decision-making capacity who are victims of crime to provide evidence to a court. Additional difficulties are experienced by adults with impaired decision-making for whom English is a second language, as they may also require an interpreter and audio/visual aids when giving evidence in court.

It is critical that people with impaired decision-making capacity be provided with appropriate and readily accessible supports to tell their story to a court without fear of reprisal. Making these supports standard and readily available would better recognise the rights of people with a disability in a way that accords with the Convention on the Rights of Persons with Disabilities (Article 13).¹

Justice processes

It is also important that adults with impaired decision-making capacity are kept informed and included in an appropriate and timely way throughout the justice process in a manner suitable to their individual communication needs. This encompasses the entirety of the process from investigation and prosecution, through to the offender's parole period.

¹ Article 13 of the [Convention on the Rights of Persons with Disabilities](#) states that:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate 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.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Crimes committed against adults when incarcerated

The above obstacles to reporting a crime are compounded and seemingly insurmountable for people with impaired decision-making capacity who are incarcerated. Faced with a greater risk of being physically or sexually assaulted in a prison environment, an understandable fear of reprisal from the perpetrator and a lack of trust in the criminal justice system, they are even further disadvantaged and unlikely to make any allegations to authorities about the crimes committed against them.

Access to information

Adults with impaired decision-making capacity may not understand that any abuse they are experiencing is wrong and a crime. Accessing information on their rights that is suitable to their communication needs is an obstacle to people with an impairment, both in terms of recognising that a crime has been committed and how to report it to authorities. While such information may be currently available, knowing how to access it can be an obstacle to victims who are unsure of their rights.

Recommendation 1:

Training for police officers on identifying a person who may be experiencing impaired decision-making capacity when reporting a crime and how to source appropriate support specific to the victim's communication needs.

Recommendation 2:

Targeted support for people with impaired decision-making capacity who are victims of crime at all stages of the legal process to ensure they can pursue legal action against perpetrators and obtain justice from the courts.

Recommendation 3:

Adults with impaired decision-making capacity must be kept informed and included in an appropriate and timely way throughout each stage of the justice process in a manner suitable to their individual communication needs.

Recommendation 4:

That resources be dedicated to producing and distributing accessible information to people with impaired decision-making capacity that is suitable to their communication needs on what to do if they have been the victim of a crime.

Extending relevant aspects of domestic and family violence support strategies to victims of crime with a disability

OPG's community visitors have observed the success of multi-agency models in enabling those most vulnerable to seek support and maintain safety in DFV situations. Initiatives such as the establishment of High Risk Teams bring relevant departments together to case manage vulnerable victims of DFV and provide supports. One of the criteria that signifies high level vulnerability is disability.

However, initiatives such as High Risk Teams are currently only available when the situation falls within the definition of DFV. OPG would see value in developing a multi-agency model that is specific to the needs of people with a disability wherein departments case manage, inquire, and promote supports for people with a disability who are vulnerable to violence. Such a model, which would incorporate state police services, could provide education across sectors on working with people with a disability and

provide an understanding of evidence across the multifaceted team of professionals. A strong support system is critical for all victims of violence.

Lack of housing options

The shortage of affordable, accessible, well-located housing can leave adults with impaired decision-making capacity vulnerable to being victims of crime. They may fear reporting an issue with a service provider due to their reliance on the provider for mobility, food, personal care, support and transport.

When a perpetrator of violence is a family member or carer, adults with impaired decision-making capacity can also experience challenges in obtaining alternative accommodation to allow them to escape their perpetrator and report the violence. Homeless shelters can be an option of last resort for adults who have found themselves without a stable home. However, OPG clients often struggle to find a vacancy in a homeless shelter as staff do not always have the training to support the complex care needs of people with a physical and/or cognitive impairment. This is a particular concern for clients escaping domestic and family violence who have no supports and may have no other option but to return to their abuser. Without available alternative housing options, adults with impaired decision-making capacity who have experienced abuse may be reluctant to approach police for fear they will have nowhere to live and no one to provide support for their complex needs.

Housing availability remains an ongoing obstacle for people with cognitive disability to feel a sense of continuity and independence in their lives which we believe necessitates a more targeted response, particularly for those who are victims of crime.

Recommendation 5:

The development of a multi-agency approach to support victims of crime that is specific to the needs of people with impaired decision-making capacity.

Recommendation 6:

That strategies be developed that specifically target the shortage of accessible emergency accommodation for people with impaired decision-making capacity.

Children in the child protection system

Reporting a crime

It is common for children in the child protection system to have acquired a distrust of authority figures, given the abuse and/or neglect that has led to their becoming a child in care. In OPG's experience, this distrust can lead to a reluctance to report experiences of abuse to police based on a fear, real or perceived, that they will not be believed by adults when they make disclosures of abuse. OPG has also observed young victims expressing concern that they themselves will suffer consequences and risk destabilising care arrangements if/when they are making allegations of abuse against a family member, care provider or another young person placed by Child Safety in the same location.

Court processes

Re-traumatisation through court processes for children in the child protection system is an ongoing issue observed by OPG. Court processes, which are often complex and lengthy, require young victims to repeatedly recount details of the abuse they have endured to several professionals. For children without the consistent support of a trusted parent or caregiver, these processes can be especially traumatising,

particularly when they involve being confronted by the perpetrator and being cross-examined by a defence lawyer regarding the allegations of abuse. Re-traumatisation is exacerbated when legal matters take longer than expected to resolve and, just when a young person finally begins the process of healing from their trauma, they must relive the abuse when the court processes finally progress.

Recommendation 7:

Consider ways to better support children in court processes who have been in the child protection system, and children with disabilities, who are victims of crime. Strategies could include:

- an assessment of the need for victims to repeatedly recount their version of events, and
- an increase in victim liaison officers with appropriate trauma informed training.

Victims of Crime Assistance Act 2009

As a government agency, OPG has obligations under the Charter of victims' rights which is included in the *Victims of Crime Assistance Act 2009*. Where an OPG guardian is made aware that a client has been the victim of a personal crime, they must ensure that the client is informed that there are services that can support them, including police who can take the complaint and Victim Assist who may be able to help with financial assistance. In our experience engaging with the *Victims of Crime Assistance Act 2009* and Victim Assist, we believe there are improvements that could be made to the process of making an application that could make assistance more accessible for adults with impaired decision-making capacity. In OPG's experience, the Victim Assist website can be challenging to navigate and it is not easy to make an application when you are a victim of a personal offence. This problem is compounded for a victim with impaired decision-making capacity. There would be value in allowing people to make online applications for assistance and ensuring the application process is accessible for all victims of crime. Over the phone applications also need to be considered. A person fleeing a domestic violence situation may have difficulty accessing a computer to print out the documents required to make an application which can act as a significant obstacle to making an application for assistance. Being able to lodge an application over the phone could provide another avenue for victims to seek much needed support after being a victim of crime.

Recommendation 8:

That consideration be given to allowing for online and phone applications to be made for assistance through Victim Assist.

Conclusion

We trust the committee will consider the issues raised in this submission in conducting their inquiry and in developing recommendations. OPG is optimistic that the inquiry will yield positive outcomes for people with impaired decision-making capacity, and children and young people in the child protection system who are victims of crime.