



Supporting a strong, safe and sustainable sector

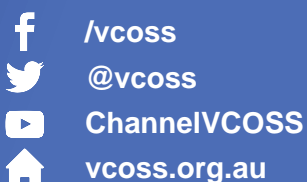
VCOSS Submission to the Victorian
Disability Worker Regulation Scheme
proposed regulations and standards

February 2020

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.



This submission was prepared by Rhiannon Wapling and authorised by VCOSS CEO Emma King.

For enquiries please contact Deborah Fewster at deborah.fewster@vcoss.org.au

A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



Contents

Overview	4
<i>Summary of recommendations</i>	7
<i>Code of Conduct for workers</i>	9
<i>Proposed registration standards</i>	18
<i>Registration standards</i>	21

Overview

KEY RECOMMENDATION

- Develop and release a clear plan and phased implementation timeline that addresses critical design issues and promotes confidence in the intent and value of the DWRS

VCOSS welcomes opportunity to provide feedback on the proposed regulations and standards for Victoria's disability workforce to be delivered by the Victorian Disability Worker Regulation Scheme (DWRS).

VCOSS advocates for systemic change to improve the lives of people with disability. We are deeply engaged in this issue through our wide range of members including disability advocacy organisations, people with disability, carer organisations and organisations which provide disability, mental health and health services. As part of our sector leadership, VCOSS supports Victorian disability advocacy organisations to undertake collaborative systemic advocacy under the banner of the 'Empowered Lives' campaign¹.

As identified by a range of state and federal inquiries and reports², clear and consistent complaints processes and oversight, as well as workforce strategies, practices and standards, all have a role to play in the delivery of safe, quality support for people with disability. People with disability, their carers and families must have trust and confidence in these systems – that their rights will be upheld, that complaints and disclosures will be taken seriously, and that there will be an appropriate response. We still hear too many unacceptable examples of people's reports and experiences being downplayed, questioned, or ignored because of their disability³.

¹ <http://empoweredlives.vcooss.org.au/>

² Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight*, June 2015; Australian Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings...*, Final report, November 2015; Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting*, December 2015; Parliament of Victoria Family and Community Development Committee, *Inquiry into abuse in disability services*, Final report, May 2016.

³ Australian Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings...*, Final report, 2015, p.155; VEOHRC, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*, 2014, p.43.

Through the DWRS, the Victorian Government proposes to introduce a consistent Code of Conduct for all disability workers in Victoria, align worker safety screenings, and establish a voluntary register of disability support workers. While there are benefits to harmonising both a Code of Conduct and worker screening, VCOSS is concerned about the rushed timelines for implementation of the worker registration scheme.

The proposed voluntary registration scheme for workers requires more rigorous development prior to implementation. It will not be powerful, effective or meaningful until the value and benefits for people with disability, carers, organisations and the broader community are well defined and understood.

VCOSS members have shared their concerns that:

- the proposal to focus on just two standards in the first registration period from July 2020, without a clear timeline or direction for future standards, is not likely to drive early engagement with the DWRS
- the proposed criminal history registration standard may duplicate existing organisational and regulatory safety checks
- the proposed language skills registration standard is likely to have unintended negative impacts on developing and retaining a culturally-diverse disability workforce, and limiting choice and control for participants from culturally-diverse backgrounds
- if registrations commence with just two standards, and further standards are subsequently added, it is not clear what the consequences would be for early entrants who do not meet the newly-added standards
- the fees to register, which are yet to be defined, may further deter workers from registering with the scheme.

During a time of growing demand for disability support workers, it is important that the introduction of the DWRS plays a positive role in addressing the workforce quality, support and size issues experienced in the sector. The concurrent challenges of the transition to the National Disability Insurance Scheme (NDIS), attracting and retaining staff, delivering training and skill development opportunities, wage and pricing constraints, the increasing casualisation of the workforce, and related state and federally funded workforce initiatives⁴ must all be considered through the implementation of the DWRS.

⁴ Department of Social Services Jobs and Market Fund 2019-2020 and 2020-2021, Innovative Workforce Fund 2017-2018, Boosting the Local Care Workforce Program including NDIS Transition Assistance Funding; National Disability Insurance Agency Information Linkages and Capacity Building Grants; Victorian Government Transition Support Package, Victorian Regional Readiness Fund.

There is huge potential for a well-designed worker registration scheme to create a range of win-win opportunities for people with disability and the workforce alike, from boosting safeguards and promoting human rights and respect, to growing and supporting a valued, skilled and sustainable disability workforce. The register will also collect vital sector data and insights which can be leveraged to inform future planning and investment.

VCOSS recognises that the DWRS:

- is being introduced in a complex environment alongside a range of other regulatory and complaints bodies⁵, laws, strategies and frameworks
- precedes a national approach to disability worker registration and the anticipated introduction of Victoria's NDIS Worker Screening Unit (NDIS WSU) from July 2020⁶
- is likely to evolve over time, as the complex policy landscape continues to shift across disability and intersecting services and systems, including ongoing inquiries and royal commissions
- must be flexible and responsive to the changing environment, and maintain deep connections to a range of stakeholders.

However, VCOSS is concerned the lack of clarity and detail about the implementation of the DWRS in the critical establishment phase will undermine its authority and effectiveness. For the register to achieve its full potential of strengthening safeguards, closing gaps and driving consistency, it must deliver value and drive quality for people with disability, the disability workforce and the broader community. If the value, role and intent of the DWRS is not clearly defined and communicated from the outset, there is a risk it will be perceived as simply another bureaucratic band-aid that attempts to patch the holes created and perpetuated across governments and service systems. If there are too few incentives or benefits that encourage workers to register, and if engagement is low, the DWRS will not deliver greater protections for people with disability as it intends.

Ideally, the introduction of the voluntary worker register would be delayed until critical design issues are thoroughly considered and addressed. VCOSS recognises that there is limited scope to institute such a delay. Consequently, with the introduction of the scheme just months away, VCOSS urges the DWRS to release a clear plan and phased implementation timeline to mitigate the issues canvassed in this submission.

⁵ Victorian Ombudsman, *Disability services complaints*, www.ombudsman.vic.gov.au/Complaints/What-We-Can-and-Cannot-Investigate/Disability-service-complaints, accessed 16 January 2020.

⁶ NDIS Quality and Safeguards Commission, *Worker Screening Requirements (Employees of Registered NDIS Providers)*, www.ndiscommission.gov.au/workers/worker-screening-workers#02, accessed 12 February 2020.

Summary of recommendations

Scheme design and implementation

- Develop and release a clear plan and phased implementation timeline, or delay the introduction of the voluntary worker register until critical design issues are thoroughly considered and addressed

Code of Conduct for workers

- Adopt the NDIS Code of Conduct as the common code for all disability workers in Victoria
- Boost funding for independent disability advocacy and self-advocacy organisations to assist more people to understand their rights and make a complaint so the Code of Conduct is meaningful
- Ensure complaints are directed to the right place easily and effectively, including referrals to police for alleged criminal acts, through a 'no wrong door' approach
- Mandate and monitor comprehensive training on the Code of Conduct for all disability workers in Victoria, including how to refer or make complaints
- Develop and implement a communications and engagement strategy to promote the value of the DWRS, and broad knowledge and understanding of the Code of Conduct
- Monitor, evaluate and publicly report on the nature and frequency of complaints, and use this information to identify and act on systemic trends and issues
- Continue work towards a nationally consistent Code of Conduct, as part of broader national quality, safeguarding and workforce strategies

Prescribed offences

- Align the list of prescribed offences for criminal history screening to the NDIS Worker Screening Check

Proposed registration standards

Introducing the registration scheme

- Ensure the introduction of the worker register is supported by the public release of a detailed implementation plan before July 2020, including a clear and compelling value proposition, the scope and timeline for each registration standard, definitions of divisions, and a fair fee structure

- Mandate or prioritise the registration of workers who provide personal care, behaviour support, therapy and other specialist services, and leadership roles, across all settings, while enabling reasonable choice and control
- Establish information sharing protocols with other relevant safety checks and registers
- Continue to advocate for the development of a national disability worker registration scheme

Registration standards

- Adopt a consistent list of prescribed offences, aligned to the NDIS Worker Screening Check, for worker safety screenings
- Review the scope and intent of the language standard to ensure it is fit for purpose and does not deter or discriminate against workers from culturally and linguistically diverse backgrounds or limit choice and control for participants
- Lead further consultation with the sector to develop the continuing professional development standard with consideration to scope, cost and time implications for the workforce and organisations
- In consultation with the sector, develop a comprehensive workforce framework to underpin a scope of practice standard and provide clear career pathways for the disability workforce
- Continue in-depth engagement and consultation with the sector, training providers and government to progress work towards minimum qualifications for the disability workforce
- Review or remove the proposed standard for mental and physical health to ensure people with lived experience are not deterred from pursuing a career in disability services
- Collect information about professional indemnity insurance as part of the registration process to assess coverage across the disability sector

Code of Conduct for workers

RECOMMENDATION

- Adopt the NDIS Code of Conduct as the common code for all disability workers in Victoria

VCOSS welcomes the introduction of a consistent Code of Conduct for all disability workers in Victoria through the broader adoption of the NDIS Code of Conduct. As identified in the Discussion Paper, an important principle of the use of the NDIS Code is ensuring there are no reductions in obligations and protections for Victorians currently available under the *Code of conduct for disability service workers: zero tolerance of abuse of people with a disability* (Zero Tolerance Code). The adoption of a common Code of Conduct for registered and unregistered disability support workers has the potential to:

- support safe, high quality service delivery
- drive positive behaviours and organisational cultures
- promote consistency
- reduce regulatory duplication
- minimise disruption and administrative burden.

However, a Code of Conduct is only an effective safeguarding tool if it is well known, widely understood, and actively regulated and enforced. VCOSS members have continually highlighted the inadequacy of existing safety and complaints mechanisms, including:

- limited knowledge and awareness among people with disability and their support networks
- low or varied staff and community understanding
- confusing and inaccessible processes
- insufficient powers to direct action
- conflicts of interest
- lack of analysis to identify systemic issues
- inadequate resources to properly monitor staff and services.

To ensure the statewide adoption of a consistent Code provides effective protections, its implementation must be supported by thorough worker training, investment in independent advocacy, a robust communications strategy, a 'no wrong door' approach and a focus on continuous improvement.

The critical role of independent disability advocacy and self-advocacy

RECOMMENDATION

- Boost funding for independent disability advocacy and self-advocacy organisations to assist more people to understand their rights and make a complaint so the Code of Conduct is meaningful

Independent disability advocacy protects and advances the rights and interests of people with disability, and promotes these rights to the wider community. It empowers people with disability and their support network to understand their human and legal rights, communicate their needs and have their needs met⁷. It is an important safeguard to help prevent and report abuse⁸.

Disability advocacy and self-advocacy organisations work with people with disability and their support network to learn about and understand:

- their rights and what it means to feel safe
- what types of behaviours are acceptable and unacceptable
- what to do if they receive poor quality services or feel unsafe
- what constitutes violence, abuse and neglect
- how to raise a concern, assert their rights or make a complaint.

The statewide, comprehensive adoption of the Code of Conduct would be stronger and more achievable if supported by additional and ongoing funding for independent disability advocacy and self-advocacy programs. As noted by the Victorian Ombudsman's reports in 2015, the role of advocacy is particularly important in supporting people who are afraid or face difficulties in raising issues or making complaints⁹.

Further investment in a strong and diverse disability advocacy sector would enable advocacy organisations to help raise awareness of the Code and build people's capacity and

⁷ Disability Advocacy Resource Unit, *What is disability advocacy?*, www.daru.org.au/wp/wp-content/uploads/2011/12/What-is-disability-advocacy_final-June-2016.pdf, accessed 12 February 2020.

⁸ VCOSS, *Submission to the Victorian Parliament's Inquiry into Abuse in Disability Services: Stage 2*, November 2015.

⁹ Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight*, June 2015, p. 86; Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting*, December 2015, p.18.

confidence to identify issues and report breaches of the Code. Advocates can also play a crucial role in identifying and reporting systemic issues to improve sector practice and help prevent future cases of violence, abuse or neglect.

Disability advocacy organisations are currently swamped with requests for assistance, with many maintaining long waiting lists or closing their books¹⁰. The Victorian Office for Disability provided a welcome short-term 25 per cent increase in core funding for state-funded disability advocacy organisations for 2018/19 and 2019/20, however, organisations are still unable to meet all requests for assistance.

While we welcome federal¹¹ and state government funding commitments to extend disability advocacy funding until 2020¹², and to support related sector projects¹³, a longer term strategy and funding commitment is required. Significant challenges that have emerged through the roll out of the NDIS, coupled with ongoing and growing requests for assistance, highlight the vital role of disability advocacy in protecting and promoting the rights of people with disability.

We recommend the Victorian Government complements the implementation of the DWRS with funding increases to advocacy organisations to:

- build understanding of and engagement with the DWRS by people with disability, carers and families
- support people to access individual advocacy and self-advocacy programs
- expand advocacy service coverage in regional areas
- ensure tailored, culturally safe services are available for people who may face additional barriers in making a complaint, by investing in support for First Nations people, people from culturally diverse communities, LGBTIQ+ people, women with disability, children and young people.

As the DWRS is being introduced to sit alongside a range of existing feedback and complaints mechanisms in Victoria, it is vital that people with disability are supported to understand its purpose and powers, and we believe disability advocacy organisations are best-placed to deliver this support.

¹⁰ Strengthening Disability Advocacy Conference 2019, *Advocacy under pressure*, 2 September 2019, www.daru.org.au/conference-session/opening-address-3, accessed 12 February 2020.

¹¹ Hon Christian Porter, *Media release: Turnbull Government investing \$60 million in disability advocacy*, 9 August 2017.

¹² Hon Martin Foley, *Media release: Expanding Disability Advocacy Across Victoria*, 5 September 2018.

¹³ Hon Luke Donellan, *Media release: Speaking Up For Victorians With Disability*, 16 January 2019; *Media release: New Funding To Strengthen Disability Rights*, 16 July 2019.

A ‘no wrong door’ approach

RECOMMENDATION

- Ensure complaints are directed to the right place easily and effectively, including referrals to police for alleged criminal acts, through a ‘no wrong door’ approach

We are supportive of the DWRS’s intention to take a ‘no wrong door’ approach to handling complaints¹⁴ to ensure any issues are managed by the most appropriate regulator. It can be confusing for people with disability, families and carers to know who to talk to and where to lodge complaints, and the process itself should not act as a barrier to raising concerns or reporting issues.

We are also pleased to see that the DWRS will receive concerns and complaints raised by people with disability, family members, friends, providers, workers, colleagues and advocates¹⁵. Enabling everyone to engage with the DWRS will provide broader and stronger protections for people with disability.

Where a complaint relates to an alleged criminal act, it is crucial that the Commissioner facilitates swift and sensitive referrals to the police for further investigation. As identified in the Victorian Equal Opportunity and Human Rights Commission’s ‘Beyond Doubt’ report, “the level of crime experienced by people with disabilities both in Victoria and across Australia is substantial. This is in spite of – and sometimes the result of – systems that are designed to provide support and protection”¹⁶. The DWRS and Victoria Police must work together to ensure people with disability can confidently make complaints and report crimes.

¹⁴ Victorian Department of Health and Human Services, *Disability Worker Regulation Scheme proposed regulations - Consultation paper*, December 2019, p.10.

¹⁵ Ibid, p.9.

¹⁶ VEOHRC, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*, 2014.

Mandating and monitoring comprehensive training

RECOMMENDATION

- Mandate and monitor comprehensive training on the Code of Conduct for all disability workers in Victoria, including how to refer or make complaints

For the Code of Conduct to be meaningful and help drive safe, quality service provision, all workers need a thorough understanding of their obligations and responsibilities under the Code and the rights of people with disability.

Registered NDIS providers are required to include a training module on the NDIS Code of Conduct in induction for new workers, and encourage existing workers to complete the module as part of their ongoing learning and development¹⁷. Completing the online orientation module is optional for unregistered providers and their workers, and there is no formal mechanism for informing unregistered providers about their obligations under the Code¹⁸. These same workforce education challenges are likely to occur through the expansion of the Code to all disability workers in Victoria.

A cursory read of the seven NDIS Code of Conduct standards is not sufficient or substantial enough to ensure disability workers have a thorough and meaningful understanding of the principles in practice, particularly in relation to disability rights and restrictive practice.

To support the effective, broad implementation of a common Code of Conduct, the DWRS in consultation with the NDIS Quality and Safeguards Commission should develop a mechanism to mandate and monitor disability worker training on the Code. Workers need to feel confident in understanding how the Code informs their practice, and also how they can support people to make complaints or raise concerns themselves. Training initiatives could leverage existing NDIS Code of Conduct materials. Through a joined-up approach, the DWRS and the NDIS Quality and Safeguards Commission could work together to promote participation extensively across the workforce, measure participation rates and connect mandatory completion to the disability worker registration process.

¹⁷ NDIS Quality and Safeguards Commission, *Worker orientation module 'Quality, Safety and You'*, www.ndiscommission.gov.au/workers/training-course, accessed 14 January 2020.

¹⁸ Department of Social Services, *NDIS Quality and Safeguarding Framework*, 9 December 2016, p.58.

Communications and engagement

RECOMMENDATION

- Develop and implement a communications and engagement strategy to promote the value of the DWRS, and broad knowledge and understanding of the Code of Conduct

The Code of Conduct must go beyond well-meaning ‘feel good’ platitudes to achieve greater impact in practice. Key to the successful implementation of a common Code is educating and empowering people with disability, disability support workers, providers and the broader community about the intent and significance of the Code.

People with disability and their carers need to know the Code exists, understand what it means and feel empowered and safe to make a complaint. The wider community also have an important role to play in the successful implementation of the Code. Cultural change needs to occur across the Australian community that recognises the rights and contributions of people with disability.

In addition to investments in disability advocacy, we recommend the DWRS designs and implements an extensive communications and engagement strategy – co-designed with people with disability and carers – to promote broad knowledge and understanding of the Code, including people’s rights and responsibilities, how to report breaches and how to make complaints.

Information about the Code must be proactively promoted to people with disability, carers and hard to reach communities in a range of accessible formats and tactics. Relying on online communications alone is not sufficient, particularly as people with disability are more likely to experience a lower level of digital inclusion, linked to affordability, accessibility and literacy¹⁹. Extensive awareness of the Code will be critical to its success as a safeguarding measure.

¹⁹ Centre for Social Impact, *Measuring Australia’s Digital Divide: Australian Digital Inclusion Index 2019*, p. 6; G Goggin, S Hollier & W Hawkins, *Internet accessibility and disability policy: lessons for digital inclusion and equality from Australia*, Internet Policy Review, 6(1), 2017.

Monitoring, reporting and systemic trends

RECOMMENDATION

- Monitor, evaluate and publicly report on the nature and frequency of complaints, and use this information to identify and act on systemic trends and issues

Ongoing monitoring and evaluation of compliance with the Code will help to determine its effectiveness, identify trends and systemic issues that require sector-wide preventative action, and drive continuous improvement. Through this approach, the DWRS will be better placed to evolve and adapt to deliver better and more comprehensive protections and initiatives, which may include future amendments to the Code, further worker and community education, expanding the role and powers of the DWRS, or introducing other initiatives.

Annual public reporting on the nature and frequency of complaints and outcomes, breaches of the Code and corrective action undertaken, will increase transparency and confidence in the DWRS and the Code of Conduct. It may also increase compliance with the Code among workers and providers, by increasing awareness of the types of breaches and disciplinary actions undertaken.

National consistency

RECOMMENDATION

- Continue work towards a nationally consistent Code of Conduct, as part of broader national quality, safeguarding and workforce strategies

While we welcome the introduction of greater measures to protect Victorians with disability through the adoption of a common Code of Conduct, inconsistencies across jurisdictions and funding arrangements remain and may limit the effectiveness of the DWRS.

Establishing and promoting rights-based, values-driven cultural change across the disability workforce requires a national approach to standards, practices and behaviours. The National Disability Services Zero Tolerance Framework²⁰ is an example of how the disability services sector has sought to drive organisational cultural change and improve practices, however further national approaches and consistency are needed.

Alongside the introduction of the DWRS, through its role on the Council of Australian Governments (COAG) Disability Reform Council, the Victorian Government should advocate for further national work to extend protections for people with disability. This could include a national Code of Conduct for the disability workforce and a national worker registration scheme.

²⁰ National Disability Services, *Zero Tolerance Framework*, www.nds.org.au/resources/zero-tolerance, accessed 16 January 2020.

Prescribed offences

RECOMMENDATION

- Align the list of prescribed offences for criminal history screening to the NDIS Worker Screening Check

VCOSS supports the DWRS's proposed use of a consistent list of prescribed offences, aligned to the NDIS Worker Screening Check, for both registered and unregistered disability support workers.

The 'Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme' provides a framework for consistent screening of offences for workers who deliver NDIS supports. As per the adoption of the NDIS Code of Conduct, harmonising the list of prescribed offences will reduce duplication, confusion and administrative burden.

Applying the same safety screening list for all workers is welcomed; however, we are concerned that gaps remain in the effective and proactive screening of unregistered disability support workers. Under the proposed regulations, the Commissioner's powers to investigate and prohibit unregistered workers who have committed prescribed offences is reliant on receiving a complaint or a notification. This approach is too reactive and may present greater safety risks for people who are fearful of raising issues or face barriers in making complaints.

As outlined in the next section of our submission, we suggest the DWRS's staged implementation includes approaches to mandate or prioritise the registration of workers who provide certain types of support, while enabling people with disability to exercise choice and control in the staff they employ for low-risk supports. In relation to risk, again it is important that people with disability and carers have the opportunity to be part of the conversation about what constitutes low, moderate and high risk.

Proposed registration standards

Introducing the registration scheme

RECOMMENDATIONS

- Ensure the introduction of the worker register is supported by the public release of a detailed implementation plan before July 2020, including a clear and compelling value proposition, the scope and timeline for each registration standard, definitions of divisions, and a fair fee structure
- Mandate or prioritise the registration of workers who provide personal care, behaviour support, therapy and other specialist services, and leadership roles, across all settings, while enabling reasonable choice and control
- Establish information sharing protocols with other relevant safety checks and registers
- Continue to advocate for the development of a national disability worker registration scheme

The DWRS's introduction of a registration scheme for disability support workers, underpinned by registration standards, presents an opportunity to strengthen safeguards for people with disability, build people's trust and confidence in choosing support workers, and nurture a strong, skilled and growing disability workforce.

Robust and well-considered registration standards have great potential to improve the quality, safety and professionalism of the disability workforce, and ultimately protect and promote the rights of people with disability. It is important that the value of engaging registered workers is clearly communicated to people with disability, carers and families; and conversely, that disability workers benefit from being registered.

The level of scrutiny and additional opportunities afforded through the implementation of the registration scheme come at a crucial time of rapid growth in the disability workforce, driven by the injection of government funding and the shift to a market-based approach.

As identified in the Consultation Paper, the disability workforce is heavily casualised, ageing and generally lower paid than other care services²¹. Initial projections suggested a workforce of 34,400 to 42,000 full time staff would be needed to deliver the NDIS in Victoria²². The disability support workforce has grown 11.1 per cent per year, compared to just 1.6 per cent growth of the overall Australian workforce over the same time period²³. This significant growth was largely driven by the increasing recruitment of casual workers.

To ensure the disability workforce continues to grow in size, skills and competence, and given the voluntary nature of the Scheme, it is imperative that the proposed registration standards do not deter workers from pursuing a career in disability work or present barriers to registration.

As outlined earlier in this submission, we are concerned that at this stage:

- there is no clear and compelling value proposition for workers to join the register
- there is limited information about the proposed standards and no schedule for their staged implementation
- it is not clear how the introduction of future standards would impact early entrants
- there are no definitions for worker divisions and protected titles
- fee structures have not been determined.

VCOSS members also fear some elements of the proposed standards may inadvertently deter people from some communities and cultures, and people with lived experience, from pursuing a career in disability support. These standards may also contribute to discriminatory practices.

The implementation of the proposed registration standards and related costs must be fully considered and appropriately funded by governments to enable the DWRS to achieve its ultimate intention of delivering safe, quality support for people with disability. The Victorian Government has a responsibility to resource and assist the sector to successfully transition to the DWRS. This includes providing free training and access to recognition of prior learning (RPL) for existing disability workers, ensuring the registration process is not onerous or costly for workers, and advocating for changes to NDIS pricing to support professional development and supervision.

²¹ Victorian Department of Health and Human Services, *Disability Worker Regulation Scheme proposed regulations - Consultation paper*, December 2019.

²² NDIS, *Market Position Statement*, April 2016.

²³ National Disability Services, *Australian Disability Workforce Report*, February 2018.

Further consideration should be given to how the DWRS balances safety and risk with choice and control. As recommended in our previous submission regarding the design and operation of the registration scheme²⁴, we believe there are benefits to mandating or prioritising registration for certain workers or roles, including workers who provide personal care, positive behaviour support, therapeutic support or other specialist knowledge and skills, and disability supervisors, managers and executives. This should be complemented by measures that enable reasonable choice and control for people who self-manage their NDIS funding or privately self-employ support workers.

Across the breadth of the disability workforce, the registration scheme will interact and overlap with a range of other safety checks and professional practice registers, including the Victorian Working With Children Check, the Disability Worker Exclusion Register, the Australian Health Practitioner Regulation Agency and the Victorian Institute of Teaching. It is important that information sharing protocols are in place between all relevant entities to ensure notifications or complaints relating to violence, abuse, neglect or malpractice are shared appropriately and promptly.

Work must also continue across governments to progress a national disability worker registration scheme. Inquiries by the Senate Community Affairs References Committee²⁵ and the Victorian Parliament Family and Community Development Committee²⁶ identified the need for a national disability worker registration scheme. We encourage the Victorian Government to continue advocating in its role on the Disability Reform Council for the development of a national disability worker registration scheme.

We welcome the opportunity to comment on the scope and nature of the proposed registration standards outlined in the Discussion Paper and provide some recommendations for consideration.

²⁴ VCOSS, *A high quality disability workforce: VCOSS submission to registration and accreditation consultation paper*, October 2017.

²⁵ Australian Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings...*, Final report, November 2015, Recommendation 2 and 4.

²⁶ Parliament of Victoria Family and Community Development Committee, *Inquiry into abuse in disability services*, Final report, May 2016, p.111-125.

Registration standards

Criminal history standard

RECOMMENDATION

- Adopt a consistent list of prescribed offences, aligned to the NDIS Worker Screening Check, for worker safety screenings

As outlined earlier in this submission, VCOSS is supportive of the use of a consistent list of prescribed offences for worker safety screenings. We remain concerned, however, that there are insufficient mechanisms for ensuring all workers are appropriately screened.

We reiterate our recommendation that the DWRS considers priority registration of workers who provide personal care, positive behaviour support, therapeutic support or other specialist knowledge and skills across disability and mainstream settings.

Registering disability workers who deliver these types of supports will ensure a basic level of screening to prevent people who have committed violence, abuse or neglect from continuing to provide disability services.

It is also important that the introduction of the worker register and this standard does not act or appear to absolve providers from their responsibility to thoroughly assess staff, identify and mitigate risks, match workers well to clients or cohorts and deliver safe, quality services.

Language skills standard

RECOMMENDATION

- Review the scope and intent of the language skills standard to ensure it is fit for purpose and does not deter or discriminate against workers from culturally and linguistically diverse backgrounds or limit choice and control for participants

Communication plays a vital role in the delivery of quality, rights-based disability support – from ensuring the goals, needs and interests of people with disability are understood and met, to building rapport and trust, through to essential tasks like administering medication and writing or reading reports.

For disability support workers, good communication extends beyond written and verbal language skills to include observation, active listening, and using assisted or alternative communication. This is especially important for the 1.2 million Australians who have a communication disability that affects how they communicate, interact, engage or understand information²⁷.

People with disability, like the broader community, are culturally and linguistically diverse; however, evidence shows they are less likely to receive formal supports and services²⁸. While 28.4 per cent of Victorians were born overseas and 26 per cent speak a language other than English at home²⁹, just 10.7 per cent of Victorian NDIS participants are from a culturally or linguistically diverse background³⁰. Recent research from Ethnic Communities' Council Victoria shows language and cultural barriers present as the top issue for many people in accessing disability services³¹. The impact of social expectations and family roles,

²⁷ Australian Bureau of Statistics, *4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings*, 2015

²⁸ Settlement Services International, *Still outside the tent: Cultural diversity and disability in a time of reform – a rapid review of evidence*, October 2018.

²⁹ Victorian Government, *Discover Victoria's diverse population*, www.vic.gov.au/discover-victorias-diverse-population, accessed 11 February 2020.

³⁰ NDIA, *Victoria Quarterly Performance Dashboard*, December 2019.

³¹ Ethnic Communities' Council of Victoria, *'It's Everybody's Business' - Multicultural Community Perspectives on Disability and the NDIS*, June 2019.

coupled with the limited availability of culturally appropriate services, means caring responsibilities often fall to women, who may also be juggling multiple caring roles³².

The DWRS intends to introduce a language standard in the first registration period to collect self-declared information about an applicant's competency in speaking or communicating in English and other languages. The scope of the self-declaration, and what's considered to be an adequate level of communication and understanding, is not yet defined, including how this may differ for each registration division. While there is merit in introducing a language standard, given its relevance to medical and reporting tasks, we are concerned about the potential impact of this standard on supporting and growing a culturally diverse workforce.

People from culturally diverse backgrounds and newly arrived communities often experience discrimination and additional barriers through the job seeking process³³. Close to one in three of workers experienced harassment or discrimination at work in the past year³⁴.

Data about the diversity of the disability workforce in particular is limited; however, research into the aged care workforce indicates that one in four workers speak a language other than English³⁵. Analysis of the 2011 Census also shows 34 per cent of 'aged and disabled care workers' and 44 per cent of 'personal care assistants' were born outside Australia³⁶.

Any measures that limit the diversity of the disability workforce are likely to also have detrimental impacts for people with disability from culturally diverse backgrounds, by reducing the market for culturally responsive services and limiting consumer choice. Sharing the same language, observing customs and traditions, understanding preferences regarding the role of family members, and being aware of cultural stigma around disability, entrenched beliefs and power imbalances are all important factors for culturally diverse communities in accessing support services³⁷.

³² R Aryal, *Dealing with it myself: Supporting Immigrant and Refugee Carers in Australia*, Multicultural Centre for Women's Health, 2017.

³³ FECCA, *Multicultural Access and Equity: Building a cohesive society through responsive services*, 2015; FECCA, *Fact sheet: Employment issues facing CALD communities*; A Kosny, I Santos & A Reid, *Employment in a "Land of Opportunity?" Immigrants' Experiences of Racism and Discrimination in the Australian Workplace*, *Journal of International Migration and Integration*, Vol. 18(2), May 2017, p.483-497.

³⁴ Diversity Council of Australia, *Inclusion at Work Index 2019*, www.dca.org.au/inclusion-at-work-index, accessed 11 February 2020.

³⁵ D King, K Mavromaras, B He et. al., *The Aged Care Workforce 2012: Final report*, 2013.

³⁶ E Adamson, N Cortis, D Brenna, S Charlesworth, *Social Care and migration policy in Australia: Emerging intersections?*, *Australian Journal of Social Issues*, Volume 52, Issue 1, March 2017.

³⁷ KJ Heneker, G Zizzo, M Awata, I Goodwin-Smith, *Engaging Culturally and Linguistically Diverse Communities in the National Disability Insurance Scheme*. Australian Centre for Community Services Research, Flinders University, Adelaide, 2017, p.59-71; S Feldman and H Radermacher, *Emerging Ageing Project – Literature Review*, *Ethnic Communities' Council of Victoria*, August 2017, p.18-20.

Research across health and community care sectors highlights the significant value of bi-lingual and bi-cultural workers³⁸. Language opens doors to better access to services for people from culturally diverse backgrounds, reduces isolation, and enables stronger social and community connections and participation³⁹.

There is an opportunity for this standard to take a strengths-based approach by capturing further information about the full range of communication skills and experiences of workers to better support participant choice and control, value the strengths of a diverse workforce, identify gaps and plan for the future. Knowledge of languages other than English, Auslan, and other forms of communication including augmentative and alternative communication strategies and tools, are all skills that would be of interest to both people with disability and employers. Bi-lingual and bi-cultural workers play a crucial role in supporting people with disability and their capabilities and skills should be recognised and rewarded.

³⁸ FECCA, *Australia's bilingual and bicultural workforce*, 2017.

³⁹ Feldman and H Radermacher, *Emerging Ageing Project – Literature Review*, Ethnic Communities' Council of Victoria, August 2017, p.15-16.

Continuing professional development standard

RECOMMENDATION

- Lead further consultation with the sector to develop the continuing professional development standard with consideration to scope, cost and time implications for the workforce and organisations

Ongoing training and professional development is an essential component of maintaining and building the skills, competence and professionalism of the disability workforce. Vocational and workplace training, in both skills and disability rights, have been identified in previous inquiries as playing an important role in supporting workers to recognise and respond to neglect and abuse, and reducing levels of violence, abuse and neglect⁴⁰.

Continuing professional development (CPD) builds knowledge and expertise, and paves the way for people to pursue engaging, meaningful careers. CPD can span a range of activities from formal face-to-face training, conferences and seminars, to online modules and on-the-job skill development. CPD standards are common in other service and professional sectors, including health care, nursing, therapy, medical specialists and social work. The standards for each field vary in terms of minimum hours, how the hours align to the role performed, and the mix of activities that constitute CPD.

The Discussion Paper notes that a standard for CPD will not be set in the first registration period, however a 10 hour CPD requirement may be introduced in further iterations. VCOSS supports the introduction of 10 hours of CPD as a starting point, however the scope of this standard needs to be more clearly defined. We recommend that essential safety training, like first aid and CPR, is excluded from the 10 hour minimum which could too easily be absorbed by a single day of training. The number of CPD hours should also scale up in relation to the role or division of a worker.

Given the highly casualised nature of disability support work and the low wage rates⁴¹, the cost and time implications of a CPD standard must be carefully considered to reduce the

⁴⁰ Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings...*, November 2015.

⁴¹ Victorian Department of Health and Human Services, *Disability Worker Regulation Scheme proposed regulations - Consultation paper*, December 2019, p.7.

financial burden for workers seeking to enter the workforce or progress their career. The growth of the gig economy, including online platforms to directly hire workers, opens up flexibility and choice for people with disability and the workforce. However, in the context of a CPD standard, it is not clear who would be responsible for funding, delivering and monitoring training and development for these workers.

Workforce development is the primary concern of disability services providers⁴². While most CPD activities are delivered or coordinated by providers, many report challenges in providing sufficient and effective professional development in the current funding environment. More than three-quarters of NDIS providers fear they will not be able to deliver services within current pricing structures, which do not adequately reflect the cost of quality service delivery or consider administrative and professional development costs⁴³. There are fears that the disconnect between NDIS pricing and the reality of delivering services threatens the sustainability of services⁴⁴, which may have the flow-on effect of limiting the choices available to people with disability.

Many organisations continue to deliver training programs in isolation and, as a result, duplication and inconsistencies can occur across the sector. The costs for organisations to provide professional development and mentoring, in addition to the need to backfill staff while they learn, needs to be considered and adequately resourced. There is an opportunity for governments and providers to work together to coordinate and fund disability workforce training and professional development. Projects and pilots funded by state and federal governments should be evaluated and, where successful, expanded to reduce duplication, build on best practice, and create consistency.

As identified by the Victorian Parliament's report, ongoing professional development is "a critical component of the statewide prevention and risk management disability workforce strategy. The sector requires leadership and collaboration to develop a coherent, practical and tailored suite of training packages and modules to ensure a high standard of professional development"⁴⁵. The Senate's report echoed similar sentiments in its recommendations for national consistency in disability worker training⁴⁶.

⁴² G Carey, M Weier, E Malbon, G Duff & H Dickinson, *How is the Disability sector faring? A report from National Disability Services' Annual Market Survey*, February 2020, p.28.

⁴³ National Disability Services, *State of the Disability Sector Report*, November 2019.

⁴⁴ G Carey, M Weier, E Malbon, G Duff & H Dickinson, *How is the Disability sector faring? A report from National Disability Services' Annual Market Survey*, February 2020, p.22-24.

⁴⁵ Parliament of Victoria Family and Community Development Committee, *Inquiry into abuse in disability services*, Final report, May 2016, p.138.

⁴⁶ Australian Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings...*, Final report, November 2015, Recommendation 3.

Experience and scope of practice standards

RECOMMENDATIONS

- In consultation with the sector, develop a comprehensive workforce framework to underpin a scope of practice standard and provide clear career pathways for the disability workforce
- Continue in-depth engagement and consultation with the sector, training providers and government to progress work towards minimum qualifications for the disability workforce

While a standard for experience or scope of practice will not be introduced in the first registration period, the DWRS will collect information about worker experience, training, qualifications and scope of practice. Based on this information, the DWRS will register workers under one of two different categories, called divisions, which relate to their professional competency⁴⁷.

Currently anyone can call themselves a disability support worker, and a person with disability, carer or member of the public has no easy way to determine whether a particular worker has the right skills or knowledge to provide certain supports. While the DWRS proposes to introduce two divisions – ‘disability support worker’ and ‘disability practitioner’ – and protected titles, there is insufficient detail about their definition at this point in time including what the suitable qualifications or training for these roles would be and progression pathways. Research from the Department of Social Services shows around 71 per cent of newly created jobs in disability support are expected to be support worker roles, 12 per cent allied health service roles, 11 per cent case worker roles and 6 per cent managerial roles⁴⁸.

The current lack of career paths in the sector may contribute to a loss of workers to the public sector and other industries, which the sector simply cannot afford if it is to grow to meet demand. While some frontline workers may be promoted to leadership positions, there are often limited opportunities for promotion and development.

⁴⁷ Victorian Department of Health and Human Services, *Disability Worker Regulation Scheme proposed registration standards Consultation paper*, December 2019, p.2.

⁴⁸ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p.15.

Further in-depth engagement with the sector is required to develop a comprehensive workforce framework to underpin the DWRS standards and provide clear career pathways for the disability workforce. This work should be integrated with national approaches, including the NDIS Capability Framework currently in development, which will set out behaviours, core capabilities, complementary capabilities for specialist roles, and develop a range of tools and resources⁴⁹.

Survey data from National Disability Services shows Victoria has the highest level of qualified workers across the country, with 30 per cent of new workers having formal qualifications⁵⁰. VCOSS members have a diverse range of views on minimum qualifications and value the choice and control of people with disability to select the workers who best match their needs. The quality of disability qualifications also varies substantially. However, we believe that a gradual transition to minimum qualifications, coupled with improvements to the accessibility and quality of courses, would work to lift service standards and safety across the sector and boost the value and respect of the disability workforce.

Part of the transition to minimum qualifications could include a stronger focus on funded and consistent minimum training. For example, the Course in Introduction to the NDIS (22469VIC) is a 40-hour course that was developed in consultation with the sector to provide an introduction to working in the field and a pathway into further studies⁵¹. Providers of this course use the same fully developed content and assessment resources, which works to drive consistency, reduce duplication and remove the costs of course development. There are currently other courses under development for the disability sector through a similar approach. The skills gained through these courses and the workers experience, coupled with consistent guidelines recognition of prior learning (RPL), could support the transition to minimum qualifications. The costs to participate in each course must be carefully considered and funded by governments to boost participation, in the same way the Victorian Government continues to invest in free TAFE for priority courses.

Funding constraints on service providers and the low pay of workers are important considerations in relation to the introduction of an experience or scope of practice standard that includes minimum qualifications. It is important that any training or development measures assist to boost the workforce and attract people to the sector, and that they do not

⁴⁹ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p.16.

⁵⁰ National Disability Services, *Australian Disability Workforce Report 3rd Edition*, July 2018, p.20.

⁵¹ RMIT, *Course in Introduction to the National Disability Insurance Scheme – 222469VIC*, www.rmit.edu.au/study-with-us/levels-of-study/vocational-study/certificates/course-in-introduction-to-the-national-disability-insurance-scheme-c0047, accessed 12 February 2020.

unintentionally stifle workforce growth by driving people to enter similar sectors that do not have such requirements.

As part of a sector-wide approach, the Victorian Government and the DWRS should work closely with training providers, service providers and service users to deeply understand the opportunities and the challenges in introducing minimum qualifications, including course content, provisions for RPL, work placement requirements and availability, the financial impact on the workforce, and developments in similar sectors, including aged care.

In its role on the Disability Reform Council, we also encourage the Victorian Government to advocate for NDIS pricing that delivers fair pay for workers aligned to their skills and experiences, and reflects organisational costs to provide ongoing training and professional development that boosts the quality and skills of the workforce.

Some state-based work is already underway through the Victorian Government's 'Keeping our sector strong' workforce plan and nationally through the Australian Government's 'Growing the NDIS Market and Workforce' strategy. Through a range of ongoing inquiries and royal commissions into disability, aged care and mental health, there may also be related recommendations regarding training and qualifications for health and community care.

We encourage the DWRS to actively contribute to conversations across the sector and government in relation to training, qualifications and scope of practice as part of a collaborative approach to lifting service quality across the sector, and providing greater protection for both people with disability and disability workers. The information collected through the register about the current levels of experience, training and qualifications will be an invaluable asset in planning for the disability workforce of the future.

Physical and mental health

RECOMMENDATION

- Review or remove proposed standard for mental and physical health to ensure people with lived experience are not deterred from pursuing a career in disability services

While a standard for physical and mental health will not be introduced in the first registration period of the DWRS, we are concerned about the perception and potential impact of this standard on the workforce, particularly the peer workforce of people with lived experience of disability or psychosocial disability.

The Discussion Paper notes that applicants will be asked to declare “any impairment they have that may detrimentally impact on their ability to safely deliver disability services”⁵². The impact of an impairment in delivering safe support is largely role and context-specific, and we do not believe it is appropriate for determination through worker registration.

One in five Australian workers are currently experiencing a mental health condition⁵³, and 45 per cent of Australians will experience a mental health condition in their lifetime⁵⁴. Mental health can influence employment experiences in many ways, from discrimination through recruitment processes and on the job⁵⁵, to the personal and financial impacts of work-related stress⁵⁶ and occupational violence.

Significant and sustained work continues across community and government to raise awareness of mental health and reduce stigma, from high profile public campaigns like RUOK? Day to workplace focused initiatives like Heads Up⁵⁷. There is growing evidence and support for consumer-led and driven services, particularly in the mental health space,

⁵² Victorian Department of Health and Human Services, *Disability Worker Regulation Scheme proposed registration standards Consultation paper*, December 2019, p.6.

⁵³ TNS and Beyond Blue, *State of Workplace Mental Health in Australia*, 2014.

⁵⁴ ABS, *4326.0 National Survey of Mental Health and Wellbeing: Summary of Results*, 2017.

⁵⁵ Reavley N, *People with a mental illness discriminated against when looking for work and when employed*, *The Conversation*, 4 February 2016, www.theconversation.com/people-with-a-mental-illness-discriminated-against-when-looking-for-work-and-when-employed-52864, accessed on 11 February 2020.

⁵⁶ TNS and Beyond Blue, *State of Workplace Mental Health in Australia*, 2014; National Mental Health Commission, *Creating a mentally healthy workplace: return on investment analysis*, March 2014.

⁵⁷ Beyond Blue and Mentally Healthy Workplace Alliance, *Heads Up*, www.headsup.org.au, accessed on 11 February 2020.

which is explored in the interim report for the Royal Commission into Victoria's mental health system.

“Recurrent themes in both the literature and the evaluations are that these services improve consumer experiences and outcomes by instilling feelings of hope, self-determination, responsibility for self and personal empowerment. Feeling welcomed, understood and connected to people who have been on a similar journey are also commonly cited.”⁵⁸

People with disability and mental health conditions should be encouraged to share the value of their lived experiences through meaningful careers in disability services. We are concerned the introduction of this standard may have unintended consequences in perpetuating the disadvantage experienced by people with disability and mental health conditions in finding and maintaining employment, and we urge the DWRS to reconsider the scope and purpose of this standard.

While collecting data about the physical and mental health of workers could be beneficial for workforce planning and support, this information could also be gathered through other de-identified means such as a sector-wide census.

⁵⁸ State of Victoria, *Royal Commission into Victoria's mental health system: Interim report*, November 2019, p.498.

Professional indemnity insurance

RECOMMENDATION

- Collect information about professional indemnity insurance as part of the registration process to assess coverage across the disability sector

In the disability workforce, professional indemnity insurance is often covered by service providers. Under the NDIS Terms of Business, registered providers and registered sole traders are required to maintain an adequate level of professional indemnity and public liability insurance⁵⁹. NDIS participants who self-manage their funding and directly employ staff also must have insurance in place⁶⁰.

Allied health professionals are required to have professional indemnity insurance as part of their registration⁶¹. Some unions spanning health and community services⁶² and allied health⁶³ also include professional indemnity insurance as part of their membership.

In the first registration period, the collection of information about insurance would provide a clearer picture of coverage, complexities and costs – all of which could inform the future development of a registration standard.

⁵⁹ NDIA, *Terms of Business for Registered Providers*, March 2017, p.3.

⁶⁰ NDIA, *Self-Management Guide*, p.10.

⁶¹ AHPRA and National Boards, *Professional indemnity insurance arrangements*, www.ahpra.gov.au/Registration/Registration-Standards/P11.aspx, accessed 12 February 2020.

⁶² Health and Community Services Union, *Member benefits*, www.hacsu.asn.au/Member-Benefits~26, accessed 12 February 2020.

⁶³ Victorian Allied Health Professionals Association, *Professional indemnity insurance*, www.vahpa.asn.au/member-benefits/insurance, accessed 12 February 2020.



/vcoss



@vcoss



ChannelVCOSS



vcoss.org.au