



# **A fairer, equal and more inclusive Victoria**





**VCOSS Submission to the Review of the  
Disability Act 2006**

**October 2021**

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.

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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.



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# Introduction

The Victorian Council of Social Service (VCOSS) is the peak body for social and community services in Victoria. VCOSS supports the community services industry, represents the interests of Victorians facing disadvantage and vulnerability in policy debates, and advocates to develop a sustainable, fair and equitable society.

As part of our sector leadership, VCOSS brings together Victorian disability advocacy organisations to undertake collaborative systemic advocacy that is focused on advancing positive legislative, policy and practice reforms that can improve the lives of people with disability. This submission has been informed by issues raised by VCOSS members and allies at a stakeholder information forum convened with DFFH on 7 October, as well as a VCOSS consultation roundtable and 1:1 meetings with the following organisations: Deaf Victoria, AMIDA, Association of Children with Disabilities, Gippsland Disability Advocacy, Victoria Legal Aid, Melbourne East Disability Advocacy, Uniting Vic Tas, AMAZE and the Office of the Public Advocate, supported by the Disability Advocacy Resource Unit (DARU).

VCOSS welcomes the opportunity to provide a submission to the Review of the *Disability Act 2006* (Vic) and the government's focus on ensuring that the Act "complements the NDIS and drives whole-of-government action".<sup>1</sup> As the Consultation Paper notes, 1.1 million Victorians have a disability, but only around 10% of people with disability receive support through the National Disability Insurance Scheme (NDIS). It is important that the new Act is robust and comprehensive in promoting and protecting the rights of *all* Victorians with disability.

Every day, people with disability face a range of physical, social and cultural barriers that impact their independence and impede their rights. People with disability in Australia also face higher risks of violence, abuse and neglect.<sup>2</sup> The flow-on effects include (but are not limited to) lower levels of educational attainment, higher levels of unemployment or underemployment, and social isolation – for example, people with disabilities are less likely to participate in activities outside the home.

VCOSS members are passionate about building an inclusive Victoria, where people with disability have the same opportunities as their peers. We believe that the new Disability Act

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<sup>1</sup> Review of the Disability Act consultation paper, p.1.

<sup>2</sup> Dr Georgina Sutherland, Dr Sean Byars, Mellissa Kavenagh, Professor Anne Kavanagh and Professor Gwynnyth Llewellyn,, Deeper data needed to understand scale of abuse faced by people with disability, University of Melbourne, 26 June 2020, <https://pursuit.unimelb.edu.au/articles/deeper-data-needed-to-understand-scale-of-abuse-faced-by-people-with-disability>

should have a bold vision with high aspirations to better support the participation of people with disability in the Victorian community and economy.

While the Victorian Government's role as a disability support provider and funder has changed substantially through the rollout of the NDIS, the state's ongoing responsibility for delivering inclusive and responsive mainstream services and civic spaces, and in eliminating systemic disadvantage and inequity, remains vital. This includes, but is not limited to, the provision of accessible, inclusive, responsive and just policies, programs and services spanning state jurisdictions such as child and family services, family violence prevention and response, housing, health, mental health, education and training, employment, emergency management and response, justice, and transport.

The need for a strong, comprehensive and contemporary Disability Act that is rights based and focused on embedding inclusion has been reinforced by the COVID-19 pandemic. At different stages of the pandemic, policies and programs designed and deployed as part of the emergency response have relegated – or have been silent on – the rights of people with disabilities.

This submission focuses on mechanisms that promote inclusion (the State Disability Plan, disability action plans and the Victorian Disability Advisory Council), and safeguards and rights protections (including Community Visitors, residential rights and limits to restrictive practices).

VCOSS members and allies also note that there are other intersecting pieces of legislation that the reformed Disability Act must complement, including the *Guardianship and Administration Act 2019* (Vic), the *Equal Opportunity Act 2010* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Finally, VCOSS members have raised some concerns about whether some sections of the Act, for example, forensic services, should be included in this legislation or whether they should be embedded in other legislation. This should be an area of focus in the next stages of the review process with expert stakeholders.

# Summary of Recommendations

## Embed a human rights approach

- Ensure the Act reflects contemporary thinking of disability by ensuring that the objectives and principles reflect the UN Convention on the Rights of Persons with Disabilities.
- Acknowledge the important role of disability advocacy in the Act by enshrining the right to an advocate.
- Legislate the Victorian Government's role in funding a state disability advocacy sector.

## Improve accountability – the State Disability Plan

- Amend the Act to specify that the Victorian Government's preparation of a State Disability Plan must involve co-design with people with disabilities.
- Amend the Act to require the tabling of annual reports in Parliament to increase transparency and accountability.
- Enhance oversight – and optimise the value of annual reporting – by ensuring the outcomes framework for the next State Disability Plan has specific targets and robust measures that enable objective assessment of impact and effectiveness.
- Fund the implementation of the State Disability Plan through the introduction of Rolling Action Plans.

## Improve accountability – Disability Action Plans

- Require disability action plans to be published on an accessible public register.
- Require prescribed public sector organisations to prepare a disability action plan every four years.
- Amend the Act to enable the Minister to issue guidelines that prescribed public sector organisations must have regard to when creating their disability action plans.
- Require prescribed public sector organisations to co-design disability action plans with people with disability.

## Strengthen youth voice at the Victorian Disability Advisory Council

- Use co-design principles to identify new strategies to elevate the voice of young people with disability at VDAC, for example, through increasing their representation on the Council or having a specific Youth Panel.

## Better leverage Community Visitors as a legislated safeguard

- Amend the Act to require the Victorian Government to provide a formal and timely response to the recommendations of the Office of the Public Advocate's Community Visitors Annual Report.

## Improve residential rights

- Review and improve protections for people with disability living in group homes to address the issues of violence, abuse, neglect and exploitation.
- Include residential rights for supported accommodation that is exempted by the Residential Tenancies Act, including Supported Residential Accommodation.
- Work with Department of Justice and Community Safety to address issues arising from different types of residential rental agreements.

## Reduce and eliminate the use of restrictive practices

- Reduce and eliminate the use of restraint and seclusion and other restrictive practices in government-funded services.

## Other issues

- Streamline the complaints process for people with disability and consider creating a Disability Inclusion Commissioner.
- Consider how the new Disability Act intersects with, and can leverage, Victoria's Social Procurement Framework.
- Release an exposure draft of the Bill for public comment and review before it is tabled in Parliament.
- Consider how to promote more accessible communication formats for all Victorian Government communications.

# Embed a human rights approach

## *A human rights approach to describing disability*

The new Act should reflect contemporary thinking to progress the human rights of people with disability. The objectives and principles of the amended Disability Act should be informed by the United Nations Convention on the Rights of Persons with Disability (UN Convention), and the Act should shift its focus from the social model of disability to a human rights model of disability.

A human rights approach to describing disability makes inclusion everyone's business. It draws attention to the responsibilities we all have to remove systemic physical, social, cultural and environmental barriers, and to change attitudes and behaviours.

As the Disability Advocacy Resource Unit (DARU) paper, *How we talk about Disability matters!* notes, the human rights model:

- *“Acknowledges the impact of impairment in the lives of people with disability.*
- *Recognises impairment as a natural aspect of human diversity that governments [and community] have a responsibility to support.*
- *Establishes the right of people with disability to live independently and be included in the community.*
- *Acknowledges that the goal of enabling people with disability to live independently and be included in the community is about far more than simply removing mainstream barriers.”<sup>3</sup>*

The paper notes:

*“The human rights model acknowledges that mainstream barriers that exist in society are only one part of the puzzle. Even once these barriers have been removed, many people with disability will still need a range of disability-related supports in order to enjoy their rights on an equal basis with others.”<sup>4</sup>*

The Act should focus on reducing ableism, removing barriers for people with disability and helping promote supported decision making, including having regard to the needs of people with cognitive disabilities.

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<sup>3</sup> DARU, HOW WE TALK ABOUT DISABILITY MATTERS! Understanding models of disability, <http://www.daru.org.au/wp/wp-content/uploads/2019/03/Human-rights-info-sheet-for-website.pdf>

<sup>4</sup> Ibid.



In relation to legislative scope, VCOSS believes that the Act should be broadened to include all mainstream systems. This would help drive whole-of-government accountability across Victorian government departments, as well as service providers funded and/or regulated by the government. For example, a stronger, more ambitious, wider-ranging Disability Act could help advance outcomes in areas such as inclusive education and public transport accessibility.

Given the role of the Disability Act in promoting accessibility and inclusion, the Act should also recognise intersectionality – that is, *“the different aspects of a person’s identity that can expose [that person] to overlapping forms of discrimination and marginalisation”*<sup>5</sup>.

### *Enshrining the right to access well-resourced disability advocacy*

Disability advocacy organisations work alongside people with disability to understand, protect and realise their human rights. They provide independent advocacy for people with disability by helping people understand their options and the decisions available to them.

Some of the examples of supports include:

- helping navigate complaints processes and advocating on behalf of a person to access housing, education and other services that are directly provided by government and/or regulated by government;
- helping resolve issues regarding government payments and pensions;
- supporting a person to leave family violence and receive protection through the justice system.<sup>6</sup>

While advocates are important for helping support people’s choice and control in their lives, their **role** is not currently recognised in the Disability Act.<sup>7</sup> There is one oblique reference to disability advocacy in the current legislation – one of the **principles** is that *“[d]isability services and regulated disability services should – ... (p) be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support where necessary to enable adequate decision making about the services they receive.”*

Disability advocacy needs to be more appropriately acknowledged in the Act given the crucial role that advocates play in safeguarding the human rights of Victorians with disabilities. This could be achieved by enshrining the “right to an advocate” in the Act, similar to that found in industrial legislation or the *National Disability Insurance Scheme Act 2013*.

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<sup>5</sup> Victorian Government, *Understanding intersectionality*, <https://www.vic.gov.au/understanding-intersectionality>

<sup>6</sup> Disability advocacy and decision-support, August 2021, p.6.

<sup>7</sup> Review of the Disability Act consultation paper, p.17.

For example, the *National Disability Insurance Scheme Act 2013* (Cth) “*acknowledge[s] the important role of advocates (including independent advocates) and other representatives of persons with disability; and requires registered NDIS providers to cooperate with, and facilitate arrangements for, advocates (including independent advocates) and other representatives of persons with disability who are affected by complaints or incidents and who wish to be independently supported in that process by an advocate or other representative.*”<sup>8</sup>

To enable Victorian disability advocacy organisations to fulfil their function – even within the narrow parameters established in the current Victorian Disability Act – they need adequate funding to meet demand, to ensure no Victorian with disability misses out on support. This not only requires additional funding for the sector, but the introduction of a sustainable funding model. While organisations funded through the Victorian Disability Advocacy Program (VDAP) have appreciated provision of some additional funding in recent years, these amounts have been time-limited, one-off boosts that don’t adequately address demand pressure or the structural challenges and legacy funding issues the sector faces.

In order for the Act to meet its intention, an increased and sustainable funding model is needed for disability advocacy organisations.

## RECOMMENDATIONS

- Ensure the Act reflects contemporary thinking of disability by ensuring that the objectives and principles reflect the UN Convention.
- Acknowledge the important role of disability advocacy in the Act by enshrining the right to an advocate.
- Legislate the Victorian Government’s role in funding a state disability advocacy sector.

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<sup>8</sup> NDIS Quality and Safeguards Commission, Disability advocacy: what is disability advocacy?, <https://www.ndiscommission.gov.au/participants/disability-advocacy>

## Improve accountability

The Consultation Paper asks whether the Act could provide opportunities for greater involvement and representation of people with disability in policy processes.

VCOSS notes that the current legislation details process requirements for the development of the State Disability Plan and disability action plans. However the section on the State Disability Plan ascribes a passive role for people with disabilities, while the section on disability action plans is completely silent on engagement. VCOSS notes that a concurrent piece of legislative reform – the Commonwealth’s proposed changes to the *NDIS Act* – enshrines co-design of the Scheme with people with disability. VCOSS advocates for the Victorian *Disability Act* to accord similar recognition of co-design in the sections on the State Disability Plan and disability action plans, to strengthen ownership by – and accountability to – Victorians with a disability.

Further accountability measures specific to the State Disability Plan and disability action plans are detailed immediately below.

# The State Disability Plan

The State Disability Plan is the Victorian Government's key platform for driving a cohesive response to improve the lives of people with disability. It sets out a whole of government approach that focuses on achieving greater inclusion and economic participation of people with disability.

However, VCOSS members have shared their concerns that the State Disability Plan is typically an aspirational document that "*promises the world, but nothing changes*". The current (sunsetting) State Disability Plan doesn't have funded actions and while there is an outcomes framework, it is high-level and lacks the required specificity to truly measure impact, compared with, for example, the outcomes framework developed for the *Victorian Public Health and Wellbeing Plan*. To drive accountability and transparency, the outcomes framework for the next State Disability Plan should include indicators, targets and measures, which are brought to life in funded rolling action plans that drive coordinated action across government.

The annual reports currently tabled in the Victorian Parliament show that the experiences of Victorians with disability differ from those without disability. They are an important accountability measure for determining the state's progress in promoting the rights of people with disability.

VCOSS members are highly supportive of the current practice to table the annual reports in Parliament. However, consistent with other States and Territories, VCOSS recommends that the Act be amended to *require* that annual reports on the State Disability Plan be tabled in Parliament. Presently, annual reporting is done by agreement with the Minister, rather than as a legislative requirement.

Consideration should also be given to requiring the Minister for Disability to provide a statement to Parliament on progress against a number of key measures such as workforce participation, life expectancy, and education attainment of children and young people with disability.

The *Gender Equality Act 2020 (Vic)* provides a useful model for clear and accountable oversight to promote equality. The broad purpose of that Act is to improve workplace gender equality. Similarly, the broad purpose of the *Disability Act* is to promote inclusion and equity for people with disability.

The *Gender Equality Act 2020 (Vic)* contains clear obligations for 'defined entities' and provisions for their reporting requirements. The website provides detailed guidance for the development of Gender Equality Action Plans, and through the legislation, entities are

required to submit a progress report against their plan to the Public Sector Gender Equality Commissioner every two years.

This legislative framework could be used as a model for strengthening the state disability plan provisions in the *Disability Act*, to ensure accountability for the State Disability Plan and disability action plans.

The Victorian Government also has a role in driving behavioral change across government departments and the wider community. Consideration should be given to running some statewide behavioral change campaigns, to drive more inclusive practices, in line with the objectives of the Act. VCOSS notes that the Disability Advocacy Resource Unit (DARU) has produced a series of videos on inclusive practices, which we would recommend that the Victorian Government consider.<sup>9</sup>

A further observation is that the State Disability Plan focuses on the social model of disability, which considers that society barriers limit the participation and inclusion of people with disabilities, not their impairment. VCOSS sees the human rights model as a more contemporary, fit-for-purpose frame. The case for a human rights frame is canvassed in detail in our comprehensive response to the Victorian Government's review of the State Disability Plan, which is attached as an appendix to this submission.<sup>10</sup>

## RECOMMENDATIONS

- Amend the Act to specify that the Victorian Government's preparation of a state disability plan must involve co-design with people with disabilities.
- Amend the Act to require the tabling of annual reports in Parliament to increase transparency and accountability.
- Enhance oversight – and optimise the value of annual reporting – by ensuring the outcomes framework for the next State Disability Plan has specific targets and robust measures that enable objective assessment of impact and effectiveness.
- Fund the implementation of the State Disability Plan through introducing Rolling Action Plans.

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<sup>9</sup> DARU, [https://www.youtube.com/channel/UCuNBhh22HAXqb-j0YBi5\\_-w/videos](https://www.youtube.com/channel/UCuNBhh22HAXqb-j0YBi5_-w/videos)

<sup>10</sup> A state of inclusion, December 2020, [https://vcoss.org.au/wp-content/uploads/2021/01/SUB\\_201223\\_VCOSS-submission-to-Victoria-State-Disability-Plan-2021-2024\\_Final.pdf](https://vcoss.org.au/wp-content/uploads/2021/01/SUB_201223_VCOSS-submission-to-Victoria-State-Disability-Plan-2021-2024_Final.pdf)

# Disability Action Plans

The *Disability Act* requires a number of public sector bodies – including state government departments and other agencies, local governments and several public health services – to develop disability action plans.

As the Consultation Paper notes *‘[d]isability action plans aim to drive public sector employment, reduce barriers, promote inclusion and change attitudes and practices that discriminate.’*<sup>11</sup>

While, in theory, disability actions plans are designed to reduce barriers and drive inclusive practices across workplaces, VCOSS members note that they can sometimes silo people and be ineffective in driving meaningful change across organisations.

To help promote accountability, transparency and drive continual improvement amongst prescribed bodies, disability action plans should be made available on a public register. VCOSS notes for example that the Australian Human Rights Commission has a public register of *Disability Discrimination Act* Action Plans.<sup>12</sup>

In doing so, this would enable prescribed public sector organisations to be able to view other organisations’ plans, and obtain new, fresh ideas on actions that could be undertaken to drive and raise the bar on inclusive workplace practices. Not only would organisations benefit from seeing other’s work, it would also enable people with disabilities to see what actions organisations have committed to undertake and help promote accountability.

Currently organisations must report on implementation in their annual reports.<sup>13</sup> VCOSS supports this measure being retained. Consideration should also be given to how to measure the effectiveness of these plans, with the use of qualitative and quantitative targets.

Given that the Act requires that the State Disability Plan must be prepared every four years, consideration should be given to including a similar timeframe in the Act for disability action plans.

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<sup>11</sup> Review of the Disability Act consultation paper, p. 25.

<sup>12</sup> Australian Human Rights Commission, Register of Disability Discrimination Act Action Plans, <https://humanrights.gov.au/our-work/disability-rights/register-disability-discrimination-act-action-plans>

<sup>13</sup> Review of the Disability Act consultation paper, p. 25.

In considering how to support best practice and driving more meaningful change and inclusive practices within workplaces, VCOSS notes that under the *Gender Equality Act 2020* (Vic), the Minister can issue guidelines for preparing Gender Equality Action Plans, which organisations must have regard to.<sup>14</sup> The Commission for Gender Equality in the public sector has developed a guidance publication to support the development of Gender Equality Action Plans.<sup>15</sup>

A similar approach could be taken in relation to supporting best practice in disability action plans through developing a guidance publication that includes both internal and external measures that prescribed organisations would need to have regard to when developing their plans. Examples of such measures could include:

- creating more inclusive workplaces (e.g. employment targets);
- goods and service delivery;
- access to premises and facilities;
- reasonable adjustments.

VCOSS notes that some states and territories include a legislative mechanism to consult with people with disability when preparing plans.<sup>16</sup>

People with disability are the experts in their own lives, and their experiences, perspectives and voices should be heard when developing plans. People with disability are best placed to identify their own needs, and how government decisions, policymaking and service design will impact them. Lived experience must be not only heard, but truly valued.

VCOSS believes that supporting the co-design of plans with people with disability will help better embed inclusive practices in workplaces and ensure the quality and depth of the engagement. VCOSS recommends that a similar legislative mechanism be included in the Act.

## RECOMMENDATIONS

- Require disability action plans to be published on an accessible public register.
- Require prescribed public sector organisations to prepare a disability action plan every four years.

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<sup>14</sup> Section 47 *Gender Equality Act 2020* (Vic).

<sup>15</sup> Commission for Gender Equality in the Public Sector, *Gender Equality Action Plan 2021 – 2025: Guidance for Defined Entities*.

<sup>16</sup> Review of the Disability Act consultation paper, p. 25.

- Amend the Act to enable the Minister to issue guidelines that prescribed public sector organisations must have regard to when creating their disability action plans.
- Require prescribed public sector organisations to co-design disability action plans with people with disability.



# Strengthen the youth voice at the Victorian Disability Advisory Council

The Victorian Disability Advisory Council (VDAC) was established in July 2007 and plays an important role in providing advice on policies and strategies to increase the inclusion of people with disability in Victoria.<sup>17</sup> Comprised of 11 members, the Council helps elevate the voices of people with disability and their carers to government.

VCOSS members are supportive of the VDAC as an advisory and oversight body that provides a voice to people with disabilities. VCOSS members believe that it is important that the role of the Council be maximised in terms of its potential to drive inclusive initiatives across government. COVID-19 has highlighted the importance of partnership between government and community leaders, and the strategic contribution that VDAC can make to government decision-making. Government should use this platform at every opportunity to help the Minister and government make good decisions with, and on behalf of, Victorians with a disability.

To this end, it is also important that the Council continues to represent a cross-section of the Victorian community including people with different disabilities, from regional/metropolitan areas and includes people from culturally and linguistically diverse communities. VCOSS members have identified that VDAC could be strengthened by including more young people on the Council, or having a specific Youth Panel that could elevate the views of young people with disability to inform government decision-making.

## RECOMMENDATION

- Use co-design principles to identify new strategies to elevate the voice of young people with disability on the VDAC, for example, through increasing their representation on the Council or having a specific Youth Panel.

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<sup>17</sup> Victorian Disability Advisory Council, <https://www.statedisabilityplan.vic.gov.au/vdac>.

# Better leverage Community Visitors as a legislated safeguard

Community Visitors play an important role in safeguarding the wellbeing of people with disability, and ensuring that they do not experience violence, abuse, neglect, and exploitation. As independent volunteers, they play an important role in enabling people with disability to share their views and help build capacity in asserting their rights.<sup>18</sup>

Disability services are supportive of Community Visitors.<sup>19</sup> It is important that Community Visitors are able to enter and report on services without fear of retribution to themselves or the people they are visiting.

In 2019-2020, there were 4142 visits by 400 active volunteer Community Visitors to disability services, mental health services and residential services.<sup>20</sup>

It is important that the Community Visitors Program is adequately resourced to undertake visits, recruit and support adequate numbers of volunteers and support the use of technology to undertake critical safeguarding role.<sup>21</sup>

VCOSS notes that each year the Office of the Public Advocate (OPA) produces a Community Visitors Annual Report.<sup>22</sup> This report contains a series of recommendations relating to residential services, disability services and mental health that the Victorian Government should consider and report on.

The OPA has noted that in relation to its 2019-2020 Annual Report that *“the recommendations contained in this report were drafted without the benefit of incorporating the State Government’s response to the previous year’s recommendations.”*<sup>23</sup> It is important that the Victorian Government responds to all Community Visitors Annual Reports and recommendations in a prompt and timely manner. VCOSS suggests that, just as government is required to formally respond within a prescribed timeframe to the recommendations of Parliamentary inquiries and those handed down by specified independent statutory bodies, such as the Commission for Children and Young People, it

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<sup>18</sup> Department of Social Services for the Disability Reform Council, Council of Australian Governments, Community Visitor Scheme Review: Confidential Final Report, December 2018

<sup>19</sup> Ibid.

<sup>20</sup> Office of the Public Advocate, Community Visitors Annual Report 2019–2020.

<sup>21</sup> Ibid, p.37, p.55.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, p.39.

should be required to respond in a timely way to recommendations published by the OPA in its Community Visitors Annual Report.

Finally, VCOSS members are supportive of Community Visitors being able to visit funded accommodation settings to ensure the safety of people with disability is upheld. However, VCOSS members hold mixed views about community visitors entering private homes. Further consultation with the sector on this issue is required.

#### **RECOMMENDATION**

- Amend the Act to require the Victorian Government to provide a formal and timely response to the Office of the Public Advocate's Community Visitors Annual Report.

# Improve residential rights

A safe, affordable and appropriate home is essential for people to live a good life.

Many Victorians with disability find it difficult, if not impossible, to meet this basic need. The lack of affordable and accessible properties in both the private and social housing markets, rental insecurity, and inaccessible crisis accommodation present significant issues for Victorians with disability.

Of the 10 per cent of Australians with disability supported by the NDIS, just six per cent are likely to be eligible for specialist disability accommodation (SDA) funding. Some Victorians with disability live in social housing (public and community), while the vast majority live in private housing.<sup>24</sup> In the social and private housing sectors, NDIS participants may have access to supports that enable contemporary living arrangements, including Individualised Living Options (ILO) and Supported Independent Living (SIL), which might include co-residency, host and independent living arrangements.

As the Consultation Paper notes, *“as the NDIS matures, it is expected that more participants will access housing and independent living supports from a range of registered and non-registered providers through the open market”*.<sup>25</sup>

The *Residential Tenancies Act 1997 (Vic)* (RTA) provides tenancy rights and protections for Victorian renters in the private and social markets. The RTA was amended in 2019 to harmonise rights for renters living in enrolled SDA with those in the broader renting market, while other residential settings, particularly settings that integrate supports, are exempted from the RTA. Residential rights in these settings – including group homes, and residential institutions – are instead provided by the *Disability Act*.

Further, many SDA providers have not yet been ready or eligible to enrol SDA and consequently, have not transitioned to the RTA. The *Disability Act* continues to provide interim residential rights for residents in these settings, via gazetting arrangements. VCOSS understands that despite the delay, all SDA will eventually transition to the RTA.

In this complex environment, some gaps and inconsistencies in tenancy rights and protections have emerged for Victorians with disability, and barriers to exercising choice and control over one’s housing, their supports and who they can live with persist.

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<sup>24</sup> NDIA, Specialist Disability Accommodation Provider and Investor Brief, April 2018, p.5

<sup>25</sup> Review of the Disability Act consultation paper, p.30.

Some examples include:

- An inability to choose who you will live in many settings in group homes.
- Experiences of violence and neglect in some group homes, and in the event of co-resident violence, support for victims and perpetrators is not readily available in these settings.<sup>26</sup>
- Issues where housing providers cannot provide housing to people who will be covered by different types of leases (for example Residential Rental Agreements in private housing, and Residency Agreements) that constrain co-residency options and choices.
- Many people with disabilities live in Supported Residential Services, and tenancy and residential rights and protections are not provided by either the RTA or the *Disability Act*.

A key outcome for this review should be the revision of the group home model to prioritise the residential right to exercise and enjoy choice, control and autonomy, which people with disabilities and advocates have long advocated for. The current group housing model in Victoria does not offer a good quality of life for many people with disabilities that live in group homes. At best, residents of group homes may lack choice and control over everyday things such as their daily schedule and activities, their meals, who will live with them and who will provide supports, and as a consequence experience social, economic and cultural exclusion. At worst, residents of group homes commonly experience violence, abuse and neglect arising from the staff casualisation, poor training, and punitive cultures, the overuse of restrictive physical and environmental practices and conflict between residents and staff and amongst residents.

The *Royal Commission into Violence, Abuse, Neglect and Exploitation* will continue to inquire into group homes, with recommendations to be made in 2023. The Victorian Government should monitor this process to ensure alignment with any recommendations that are made to improve rights for people living in group homes, as well as opportunities to establish alternative models. Until then, the Victorian Government can strengthen residential rights in the *Disability Act* to incorporate choice, control and autonomy for residents, ensure quality service delivery and strengthen oversight and accountability.

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<sup>26</sup> Office of the Public Advocate, Community Visitors Annual Report 2018-2019, September 2019, p.18.

All people with disability, regardless of what type of housing they live in, should have strong tenancy and residential rights and protections, and be able to exercise choice and control over their housing, who they live with and their supports. This Review provides an opportunity to strengthen residential rights in the *Disability Act*, as well as improve the interaction of the *Disability Act*, the RTA and the NDIS to fully realise tenancy and residential rights for Victorians with disability.

## **RECOMMENDATIONS**

- Review and improve protections for people with disability living in group homes to address the issues of violence, abuse, neglect and exploitation.
- Include residential rights for supported accommodation that is exempted by the *Residential Tenancies Act*, including Supported Residential Accommodation.
- Work with Department of Justice and Community Safety to address issues arising from different types of residential rental agreements.

# Reduce and eliminate the use of restrictive practices

'Restrictive practices' are interventions that limit a person's freedom or rights, with the objective of reducing harm to themselves or others.<sup>27</sup> This includes different types of restraints (such as physical, chemical, mechanical and social) as well as seclusion.

Evidence shows that using restrictive practices can have serious long-term consequences for people's health, wellbeing and quality of life, and can make things worse by re-traumatising people.<sup>28</sup>

In 2014 the Victorian Government endorsed the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*<sup>29</sup> but progress towards achieving this goal has been slow, with intervention rates still high and an increasing number of reports in disability services between 2011-12 and 2015-16.<sup>30</sup>

Restrictive practices are also still used on people with disability in other services, including schools, hospitals, prisons and the out-of-home care system, where different laws and regulations apply.<sup>31</sup>

The Victorian Government must take a more proactive approach to ending the use of these practices, by implementing the relevant recommendations from the Senate Community Affairs References Committee<sup>32</sup> and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).<sup>33</sup> This includes better oversight and enforcement of reporting requirements, as well as support and requirements for the use of positive behaviour management tools.<sup>34</sup>

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<sup>27</sup> Empowered Lives: Securing Change for Victorians with Disability, p.19

<sup>28</sup> Ibid.

<sup>29</sup> COAG, National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector, May 2013.

<sup>30</sup> DHHS, Senior Practitioner Report 2016-17, 2018; Australian Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings..., final report, 2015, p.99.

<sup>31</sup> Empowered Lives: Securing Change for Victorians with Disability, p.19

<sup>32</sup> Australian Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings..., final report, 2015, p.99.

<sup>33</sup> VEOHRC, Held back: the experiences of students with disabilities in Victorian schools, 2012.

<sup>34</sup> This was also recommended by the Parliament of Victoria's Family and Community Development Committee through its inquiry into abuse in disability services, 2016; Australian Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings..., final report, 2015, Recommendation 18.

## **RECOMMENDATION**

- Reduce and eliminate the use of restraint and seclusion and other restrictive practices in government-funded services.



# Other issues

## Improve complaints processes and navigation

VCOSS members note that the current complaints and investigation process is currently difficult for many people with disability to navigate.<sup>35</sup> This underscores the importance of disability advocacy organisations in helping people to navigate and uphold their rights.

Complaints can be made to a number of different bodies include the NDIS Quality and Safeguard Commission, Victorian Disability Worker Commission, Victorian Equal Opportunity Human Rights and Equal Opportunity Commission, Disability Services Commission, Commission for Children and Young People and the Victorian Ombudsman.

The Victorian Government should engage with people with disabilities, families and carers, disability advocacy organisations and other relevant stakeholders to comprehensively map and understand the user experience and identify opportunities to simplify the complaints process for people with disability.

Through our member consultations, we heard suggestions ranging from creating an accessible website that helps people to navigate the different complaints processes or running community awareness campaigns, through to bolder system reforms, such as – using the Gender Equality Commissioner and Commission for Children and Young People as models – consolidating some existing bodies that have oversight of different parts of the disability eco-system into the one Commission (for example, some members proposed the integration of the Disability Services Commission and the Victorian Disability Worker Commission). Some members put forward the view that a new integrated Commission could receive all complaints and reports regarding services to people with disability and investigate other state mainstream services that people with disability use (such as education and transport – i.e. not just specifically disability services). The proposition from VCOSS members was that this new body could work collaboratively with the NDIS Quality and Safeguards Commission to ensure all reports are investigated appropriately.

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<sup>35</sup> Parliament of Victoria Family and Community Development Committee's inquiry into abuse in disability services (2016); Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight (2015); Parliament of Australia Senate Community Affairs References Committee inquiry into violence, abuse and neglect against people with disability in institutional and residential settings (2015).

## Leveraging social procurement

As federal, state and local government departments and agencies are the largest purchaser of goods, services and construction projects in Australia, they have an important role in driving the use of public expenditure to improve social and economic outcomes.<sup>36</sup>

Social procurement refers to organisations using their buying power to generate social value above and beyond the value of the goods, services, or construction being procured.<sup>37</sup>

Victoria's *Social Procurement Framework* (Framework) was released in 2018 and was the first whole-of-government commitment to social procurement in Australia.<sup>38</sup> It sets a clear expectation that social procurement is standard practice for the Victorian Government.

"Opportunities for Victorians with disability" is one of seven social procurement objectives included in Victoria's Framework. The two nominated social outcomes for Victorian Government suppliers are purchasing from Victorian social enterprises and Australian Disability Enterprises and employment of Victorians with disability by suppliers to the Victorian Government.<sup>39</sup>

VCOSS recommends that the Department consider how the new *Disability Act* intersects with, and can leverage, Victoria's *Social Procurement Framework*.

## Release an exposure draft of the Bill for public comment

VCOSS and our members are committed to working with the Department to make the Disability Act the best Act that it can be. Recent experience with the development of the Social Services legislation to establish a new regulatory regime for the community services sector provides salutary lessons for the process with the *Disability Act*. We urge the provision of an exposure draft to stakeholders before the Bill is tabled in Parliament. This will help surface and address any gaps in the Bill at an early stage, help to identify and resolve ambiguity and unintended consequences, and provide an additional safeguard in terms of checking for any potential drafting errors.

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<sup>36</sup> University of Melbourne, Maximising the Potential of Social Procurement, <https://government.unimelb.edu.au/research/regulation-and-design/Home/Maximising-the-Potential-of-Social-Procurement>

<sup>37</sup> The State of Victoria Victoria's social procurement framework 2018, accessed 11 October 2018

<sup>38</sup> Victoria's social procurement framework, 2018, <https://www.buyingfor.vic.gov.au/sites/default/files/2018-08/Victorias-Social-Procurement-Framework.PDF>

<sup>39</sup> Ibid.

## Ensure all Victorian Government communications are accessible

VCOSS members note that, in relation to Victorian Government communications, there is still a lot of communication that is inaccessible for people with disability.

Consideration should be given to how this can be addressed in the *Disability Act*.

### RECOMMENDATIONS

- Streamline the complaints process for people with disability and consider creating a Disability Inclusion Commissioner.
- Consider how the new Act intersects with, and can leverage, Victoria's *Social Procurement Framework*.
- Release an exposure draft of the Bill for public comment and review before it is tabled in Parliament.
- Consider how to promote more accessible communication formats for all Victorian Government communications.



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