Submission to the
Victorian State Disability Plan
2017-2020

6 July 2016
Theme: Active Citizenship

1. The Plan must make specific inclusions for people with intellectual disabilities, traumatic and acquired brain injuries, developmental disabilities, those with autism spectrum disorder and intellectual disability and those with communication support needs.

The needs of people with different disabilities require differentiated support. People with difficulties in learning and understanding because of a developmental or intellectual disability require different supports than a person with a physical disability. People with intellectual disability are provided with less choice, inclusion and participation than people with other types of disability.¹ ² ³ ⁴

A person with a brain injury later in life requires different support than a person with a disability early in life.⁵ ⁶ ⁷ ⁸

Autism spectrum disorder (ASD) continues to receive increased community attention however there is a need for people with ASD and an intellectual disability to be recognised as a distinct population. Rates of individuals with ASD and ID are about 50-70% of all ASD cases⁹ yet many services are promoted as either ASD or intellectual disability. Funded ASD services should be accountable to support the needs of people with ASD and intellectual disability.

A strategy to support effective communication between people with disabilities and other members of the Victorian community is required. Having the skills to communicate with other people both within their communities and broader society is vital for all people to live a fulfilling life. The extent of severe communication impairments in Victoria is known¹⁰ and it is necessary to deliberately support people with communication disabilities¹¹. The Communication Access¹² initiative developed by Scope Victoria is an example of such an initiative, and following adequate evaluation, could be implemented in a strategic manner across the State.

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⁵ Brain Injury Australia. http://www.braininjuryaustralia.org.au


2. A framework for monitoring and reporting the use of restrictive practices in all public and funded services for people with disabilities, particularly chemical restraint.

Victoria leads practice in relation to the monitoring of restrictive interventions however this monitoring is limited to funded disability services (e.g. group homes, respite, day programs). Only a relatively small number of people with disabilities access formal disability services however a much larger number of people with disabilities receive services from less formal disability services. This leaves this cohort in a more vulnerable position because of a lack of equivalent safeguards.

People with disabilities who receive services from hospitals, attend schools, reside in aged care facilities or receive any clinical service are at risk of being subject to restrictive interventions and compulsory treatment to control their behaviour. The inconsistencies of safeguards for people with disabilities across a range of services is intolerable.

The existing protections in the Disability Act 2006 relating to the use of restrictive interventions and compulsory treatment should be extended to all people with disabilities receiving a publically funded service inclusive, but not limited to, those listed above.

The work of the Principal Practice Leader in the Department of Education & Training in monitoring the use of restrictive practices in government schools should be further resourced and extended.

In addition, deliberate work should be undertaken to build on that which has already been completed by the Senior Practitioner relating to the prescribing of medication for behavioural control and menstrual suppression by medical practitioners. The use of medication to control the behaviour of people with disabilities can be described, at best, as lacking evidence. At worst it is one of the most ill-informed violations of human rights continuing to be perpetrated internationally.

While professional articles continue to advocate for more a rationalised and informed approach towards the prescribing of medication for behavioural control of people with disabilities and prescribing guidelines exist, there is little evidence that the chemical restraint of people with disabilities in Victoria is declining.

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14 www.education.vic.gov.au/about/department/Pages/seniorpractitioner.aspx
Improved collaboration with medical practitioners is required, along with staff of disability service provider organisations, to address chemical restraint

3. In order to be consistent with international conventions, remaining institutions must be closed.

The Victorian government continues to operate or fund institutions for people with disabilities. These are proclaimed as the Colanda Centre in Colac and the Sandhurst Centre in Bendigo.

I support the position of the Public Advocate in relation to the closure of these remaining disability institutions in Victoria. The institutionalisation of people with disabilities continues to occur in opposition to Article 19 of the United Nations Convention on the Rights of Persons with Disabilities.

The families of people with disabilities who continue to reside in institutions must be effectively supported in the transition of their family member to live in the community. This should be based on the promotion of rights and legal obligations and conducted in a way informed by evidence.

4. Improved workforce education: disability support workers, clinical practitioners and applied researchers

I support the recommendations arising from the Fifth Annual Roundtable on Intellectual Disability Policy (2010) and extending this to the nursing and psychology workforces.

Following closure of Victoria’s only undergraduate program for disability support workers, there is no articulated pathway for disability support worker education from the TAFE sector. Further, the curriculums of medicine and nursing programs in Australia to support people with intellectual disabilities as well as the state of disability research in Australia have both been criticised. Victoria should invest in a comprehensive education, training and research strategy to improve the support of people with disabilities. Recent initiatives such as that of National Disability Services.

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35 Disability Act 2006, section 86


should be carefully monitored to ensure that outputs are of sufficient quality by participating in peer-review.

5. Health services should accurately record client/patient disability and publically report service provision to people with disabilities

Victorian health services record certain patient characteristics however the extent of use of such services by people with intellectual disabilities cannot be easily established. People with intellectual disabilities utilise non-psychiatric health services less than people without intellectual disabilities\(^{37}\) despite their risk of morbidity but are hospitalised for ambulatory conditions at a higher rate than patients without intellectual disabilities\(^{38}\). Only 26% of people with disabilities (defined broadly) access hospital services\(^{39}\) but have poorer hospital experiences\(^{40}\).

Acknowledging and recording a person’s intellectual disability is poorly undertaken by health services. This results in inaccurate data relating to the provision of services to people with disabilities. Health services often fail to adequately consider and accommodate a person’s disability. Health services should be supported to effectively utilise existing mechanisms for recording patient data relating to all types of disability and this data be used to design improved health services for people with disabilities, especially those with intellectual disabilities to improve health outcomes and the experience of hospital service utilisation.

Health services should be required to consult and collaborate with the person with a disability’s care team external to the service. This may include private practitioners and service providers who can provide valuable information, advice and services to support recovery from illness.

Public health services should be mandated to publically report their provision of services to people with disabilities to demonstrate access equality and commitment to international conventions, specifically Article 25 of the Convention on the Rights of Persons with Disabilities\(^{41}\). This could be included in a Disability Action Plan\(^{42}\) if one exists.

6. Implement a process for the standard and thorough investigation of deaths of persons with disabilities in disability-related funded services consistent with other leading Australian jurisdictions, specifically New South Wales and Queensland

Articles 10 and 25 of the United Nations Convention on the Rights of Persons with Disabilities articulate obligations to uphold a person’s right to life and right to the highest attainable standard of health without discrimination on the basis of disability\(^{43}\).


\(^{42}\) Disability Act 2006, section 38

People with intellectual disabilities experience a higher mortality rate than the general population\textsuperscript{44} and greater unmet health needs\textsuperscript{45} while also experiencing much greater difficulties with accessing quality health services\textsuperscript{46}.

The Victorian Department of Health and Human Services states

*Many deaths of people with disability who are clients of the department or funded community service organisations are expected due to the age and medical history of the clients, including those receiving palliative care at home or in hospital. The department and funded community service organisations are required to report the client death as a Category One incident when the death occurs in an unusual or unexpected circumstance, for example, overdose, suicide or sudden fatal illness. For all deaths that occur in departmentally managed supported accommodation, the department notifies the coroner and the Community Visitors Program managed by the Office of the Public Advocate\textsuperscript{47}.*

Not only does this statement incorrectly infer the risk variables associated with mortality but the reporting of deaths is limited to the department’s incident reporting system. This system has been criticised by the Victorian Ombudsman\textsuperscript{48}.

Reports from New South Wales and Queensland have highlighted critical concerns with states’ monitoring and response to deaths of people with disabilities in care. The New South Wales Ombudsman\textsuperscript{49} makes a number of recommendations regarding risk factors associated with the deaths of people with disabilities which are relevant to the systematic review of incidents. The Office of the Public Advocate in Queensland\textsuperscript{50} identified a number of risk factors to the deaths of people with disabilities identified from their review.

Both the New South Wales Ombudsman and the Queensland Public Advocate recommend more robust internal review processes and a higher standard of health care for people with disabilities to avoid premature deaths of people with disabilities in receipt of disability services.

Mandatory review of deaths of people with disabilities in the care of disability services should be implemented inclusive, at a minimum, of the risk factors and processes identified in these two reports. This should be incorporated into a revised incident reporting process. The department should establish a dedicated panel, comprised of appropriate representatives and experts to review the deaths of all people with disabilities in receipt of funded disability services and publically report the panel’s findings at an established frequency. The statement by the


department quoted above should be corrected to accurately reflect the contributing factors to
deaths of people with disabilities in receipt of services.

7. People with disabilities residing in Supported Residential Services (SRS) are vulnerable
to human rights abuses and must be afforded greater protections

Current standards and monitoring of SRS in Victoria are inadequate compared with other services
which support vulnerable people, particularly those with intellectual disabilities. The nature of SRS
accommodation results in significant power imbalances between the proprietor and their staff,
and residents which can result in unjustifiable limitations of resident’s basic rights such as access
to property, freedom of movement, freedom from cruel, inhuman and degrading treatment,
privacy and reputation and freedom of expression. Concerns have been documented by the
Council on the Ageing (Victoria), the Public Advocate, the Victorian Ombudsman as well as a
number of disability advocacy organisations and the Victorian Equal Opportunity and Human
Rights Commission. The SRS sector should be reformed with the rights and welfare of its
residents guiding such an undertaking. People with disabilities should be specifically included in
this process.

Theme: Making the most of the National Disability Insurance Scheme

8. State Government to advocate for a quality and safeguards framework under the NDIS
which delivers at a minimum, the existing quality and safeguards in the Disability Act
2006

I urge the State government to advocate for a quality and safeguards framework under the NDIS
which delivers at a minimum, the existing quality and safeguards in the Disability Act 2006. If this
standard of quality and safeguard is not provided by the NDIS, then the State should consider
options to ensure that safeguarding measures currently in place are maintained.

9. Practical arrangements are made for people with disabilities who may not receive
services under the NDIS because of their personal histories or behaviours of concern

There is a group of people with disabilities who are at risk of not receiving services through the
NDIS because of their aggressive, self-injurious, offending or perceived ‘high risk’ behaviour. A
market system as the scheme is proclaimed to be, will not guarantee such people with disabilities
will receive a service if they are perceived to be ‘too hard’ or ‘too risky’ for a disability service
provider to deliver services to.

51 Charter of Human Rights and Responsibilities Act 2006
-content/uploads/2011/01/supported-residential-services-review-submission_aug_08.pdf
-support/50-regulatory-impact-statement-for-the-proposed-supported-residential-services-private-proprietors-regulations-2011/#te
54 Victorian Ombudsman (2015). Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service:
55 Various. (n.d.) Submission to Inquiries into Supported Accommodation for those with Disability and Mental Illness.
Proprietors) Regulations 2011:
People with disabilities requiring less support with instrumental adaptive behaviours and more support with social and conceptual skills⁵⁷ are at risk of receiving inadequate support under the NDIS. The consequences of not receiving support for tasks requiring social and conceptual skills can be serious, such as homelessness, offending and increased mortality.

The State Government should reconsider its role as disability service provider in Victoria to provide services as a ‘last resort’ for people with disabilities who are not able to obtain services through the NDIS.