



Submission to the review of the Disability Act 2006

Submission by the Uniting Church Synod of Victoria and Tasmania and Uniting Vic.Tas, 25 October 2021

This submission is a response from the Synod and Uniting Vic.Tas to the consultation paper released by the Victorian Government on 21 September 2021. We appreciate the opportunity to share our views on progressing the rights of people with disability in Victoria, based on our policy and practice experience.

Overview

We firmly believe **the revised Disability Act must primarily be grounded in human rights**, including specifically recognising the United Nations Convention on the Rights of Persons with Disabilities. We need greater enforceability and accountability for the Act and its provisions.

We suggest the **introduction of a single-purpose Disability Commissioner**, who is responsible for the implementation of the Act, and who oversees compliance with the state disability plan and disability action plans. We envisage this role would include positive duties to support, advocate for, and promote the rights and wellbeing of people with disability across Victoria, like the functions of the Commissioner for Children and Young People and the Victorian Commissioner for LGBTIQ+ Communities. We also look to the *Gender Equality Act 2020* as a useful model.

Additionally, we consider **more time is required for genuine, meaningful consultation with people with disability**. The current consultation period has been insufficient to seek and include the voices and experiences of people with disability in an authentic way. Significant external factors — the current COVID-19 climate and competing consultations on disability policy and legislation — have influenced the community's capacity to respond, and we advise a public extension to the deadline.

Uniting Vic.Tas has included consumer voice from previous consultations. However, given the short timeframe, we were unable to consult with our consumers for this review. We have heard similar concerns from other organisations.

In this submission, we respond to the following sections of the consultation paper:

- Objectives and principles
- Definitions
- State disability plan
- Disability action plans
- Community visitors
- Restrictive practices
- Forensic disability services and sentencing.



Our experience

The Uniting Church Synod of Victoria and Tasmania (Synod) and its community services organisation, Uniting Vic.Tas, welcome the opportunity to provide input to the Victorian Review of the *Disability Act 2006*. We have a long heritage in provision of support to groups that face entrenched barriers to participation, including people with disability. Congregations also provide myriad options for people with disability, be it worship, outreach and drop-in centres, and social activities. The Uniting Church is one of many faith traditions and beliefs (inc. Buddhist, other Christian denominations, Jewish, Muslim), which are inspired to do likewise.

Uniting Vic.Tas (Uniting) is the community services organisation of the Uniting Church in Victoria and Tasmania. We deliver a range of services to people with disability across Victoria, including disability employment services and social enterprises, NDIS support coordination and supported independent living, and social inclusion and capacity building programs. We work with people with disability to provide support that fits each individual's needs and helps them fulfil their goals.

Objectives and principles

What objectives should the Disability Act have?

A primary objective of the *Disability Act* should be supporting and progressing the rights of people with disability in Victoria, in line with the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Uniting believes this should be included in the Act as a separate stated objective, alongside the current objectives of:

- advancing the inclusion and participation in the community of persons with a disability
- promoting a strategic whole of government approach in supporting the *rights*, needs and aspirations of persons with a disability [note, we recommend adding 'rights' here as well, as per italic font]
- facilitating the planning, funding and provision of services, programs, and initiatives for persons with a disability.

Additionally, we believe the current objectives around disability services should be broadened, or a separate line added, to acknowledge the importance of the Act in promoting accessibility and accountability of all organisations providing services to people with disability, whether these are specifically 'disability services' or not. We expand on this point further below when we discuss disability action plans.

There is further opportunity to legislate the key aspects of the Victorian Social Procurement Framework in the *Disability Act*. Social procurement is when organisations use their buying power to generate social value above and beyond the value of the goods, services, or construction being procured. The Victorian Government spends billions of dollars on good and services each year and legislating elements of the Framework would embed an expectation that all suppliers and supply chains adopt and maintain fair, inclusive and sustainable business practices, and support the employment of people with disability.

How could the Act support the UN Convention? How could we improve the principles in the Act?

As above, we believe the Act needs to take a human rights approach and be clearly and explicitly connected to the UN CRPD. Principles 1 and 2 refer to people with disability having 'the same rights



as other members of the community.’ Reference to the CRPD could easily be added here, as shown below in italics:

1. Persons with a disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities. *These rights are enshrined in the United Nations Convention on the Rights of Persons with Disabilities.*
2. *In line with the Convention, persons with a disability have the same right as other members of the community to...*

As discussed later in this submission, we suggest adding reference to the CRPD in the state disability plan and guidance for disability action plans as well. This would support practical implementation of human rights, rather than simply staying at high-level recognition.

The principles in the Act could also be broadened to recognise that all services have a responsibility to be accessible to, and inclusive for, people with disability. We discuss the importance of broadening the scope of services covered in the Act later in this submission, including the introduction, establishment, and implementation of a set of minimum accessibility standards for mainstream services.

The right to freedom of thought, conscience and religion¹

We also believe that the Act should recognise the right to spiritual expression. Whilst Victoria is a secular society, it is infused with the spirituality of many people: foremost that of the First Peoples’, supplemented by successive waves of immigrants.

The CRPD is concerned about the ‘difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status’.

The *Victorian State Disability Plan 2002-2012* affirmed: “people with a disability are citizens who have the right to be respected and the right to have equal opportunities to participate in the social, economic, cultural, political and spiritual life of society. As citizens, people with a disability also have equal responsibilities towards Victorian society and should be supported to exercise these”.

In the past two decades, in parallel with international trends, the spiritual dimensions of older people and people with mental health challenges have been linked closely with their overall health and quality of life, with government responding to those in its care.

The *Victorian public health and wellbeing plan 2015-2019*,² in discussing place-based approaches to enhancing quality of life and health, indicates faith-based communities as one of several local, activity-based and identity-based populations.

Spiritual expression as a right and a life-giving force needs to be recognised and captured in government legislation, policy statements and plans. When not explicitly named, it diminishes the encouragement and likelihood of responses for people who may wish to express themselves in this way. There needs, at the very least, to be a spirituality ‘box to tick’ when it comes to person-centred planning. Staff awareness and preparation should complement that.

For example, currently within Victoria, staff and carers do not routinely broach the topic of spirituality/religion/faith when preparing Annual Care Plans with residents with disability. Neither the

¹ As articulated in Article 18 of the International Covenant on Civil and Political Rights.

² Victorian Government. (2015). *Victorian Public Health and Wellbeing Plan 2015-2019*. Melbourne, p.45.



resident, nor any family or friends, are routinely consulted about whether there is interest in practising the tenets of their faith or expressing aspects of their spirituality. There are grounds to believe this to be a form of indirect discrimination.

There is a growing recognition and receptivity amongst faith communities and those in the services/advocacy sector, of the spiritual needs and aspirations of people with disability.³

What mechanisms do we need to support the principles in the Act?

We believe the regulatory framework for overseeing the provision of services to people with disability needs to be strengthened in several ways. This will support the principles of the Act as well as its other provisions. We outline our proposed approach below, and in our discussion of the state disability plan and disability action plans later in this submission.

Uniting and the Synod are not criticising existing regulators and their important functions. However previous inquiries and consumer insights indicate that there are key oversight challenges across the system, including:

- The gaps between state and national systems, particularly the National Disability Insurance Scheme (NDIS)
- The proliferation and fragmentation of regulatory bodies without clear community understanding of them or their purposes
- A lack of consistent robust compliance and enforcement powers
- No independent monitoring or oversight of the state disability plan or disability action plans.

Uniting hears from our consumers that there is confusion from people with disability about where to go to make complaints about poor service or to report abuse, because of the number of regulatory bodies that currently exist, and their varied scope and remit.

For people with disability in Victoria, relevant bodies may include the (i) Victorian Disability Worker Commission, (ii) the Disability Services Commissioner, (iii) the NDIS Quality and Safeguards Commission, (iv) the Office of the Public Advocate, (v) the Health Complaints Commissioner, (vi) the Mental Health Complaints Commissioner, (vii) the Victorian Ombudsman, (viii) the Victorian Equal Opportunity and Human Rights Commission, and (ix) the Australian Human Rights Commission. While it does not handle individual disputes or investigate individual reports, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is also an important body in this space, and another entity for the community to try to understand and fit into this complex landscape.

Consumers consistently share with us their views that these bodies are essentially 'toothless tigers,' with inadequate powers to compel the changes that are needed. Limited resources mean that many of them must rely on proactive complaints or reports and are not able to investigate systemically or issue infringements to providers. We do note the Victorian Disability Services Commissioner (DSC)

³ This is evidenced in a policy statement by the Faith Communities Council of Victoria (FCCV Inc.) (<http://www.faithvictoria.org.au/images/stories/fccv-disability-13-09-16.pdf>), and Victorian Advocacy League for Individuals with Disability (VALiD) has developed an Easy English Statement on Spirituality (<https://www.valid.org.au/wp-content/uploads/2020/03/Spirituality-Policy.pdf>).



does have the power to undertake investigations. In the 2019-2020 financial year the DSC conducted 17 such investigations, of which:⁴

- Eight were self-initiated
- Three were from incident reports
- Six were the result of complaints.

These perspectives are supported by findings from numerous reports, reviews, and inquiries over the last six years, highlighting the complexity and fragmentation of the safeguarding system for people with disability in Victoria and Australia more broadly, and the impacts of this on individuals and their access to support and reparation.

This includes the DSC's occasional paper 3, subtitled *A reflection for future safeguarding* (2021), Alan Robertson QC, *Independent Review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020* (2020), Australian Human Rights Commission's report, *A Future Without Violence* (2018), the Parliament of Victoria Family and Community Development Committee's inquiry into abuse in disability services (2016), the Australian Senate Community Affairs References Committee inquiry into violence, abuse and neglect against people with disability in institutional and residential settings (2015), and the Victorian Ombudsman's two-part report into the reporting and investigation of allegations of abuse in the disability sector (2015).

Most recently, a rapid evidence review conducted for the Disability Royal Commission and published in August 2021, found:⁵

The lack of systems was a subtheme in both the cyclical nature of violence, abuse, neglect and exploitation, as well as a subtheme of challenges to reporting. In addition to a lack of clear and consistent definitions, the literature points to a dearth of effective systems to support reporting of violence, abuse, neglect and exploitation.

The 2015 investigation by the Victorian Ombudsman found that:

*The existing oversight arrangements for dealing with incidents of abuse in the disability sector are complex, fragmented and confusing. It is extremely difficult for anyone to understand which body, if any, is ultimately responsible for the oversight of incidents in the disability sector, including that lessons are learned and reforms are implemented to prevent further abuse.*⁶

The Ombudsman's findings were released before the establishment of the NDIS Quality and Safeguards Commission, which has added to fragmentation in the system, and has itself been the

⁴ Victorian Disability Services Commissioner. (2020). *2019-2020 Annual Report*, p.6.

⁵ Koh, J., Kembhavi-Tam, G., Rose, V., Featherston, R. & Shlonsky, A (2021). *Rapid Evidence Review: Violence, abuse, neglect and exploitation of people with disability*. Commissioned research report. Centre for Evidence and Implementation & Monash University, p.30.

⁶ Victorian Ombudsman. (2015). *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight*. Melbourne, p.83, para.502.



subject of investigative reporting regarding its level of resourcing and capacity to meet demand.⁷ At the same time, we acknowledge that since then, the Victorian Parliament has strengthened the powers of the DSC in 2017 and the Victorian Disability Worker Commission came into operation in 2020. We welcome that the DSC investigates all deaths associated with disability service providers, acknowledging this is a critical element of safeguarding, and we note the important findings the Commissioner makes in the recent occasional paper, *Learning from reviews of Victorian disability service provision to people who have died 2017 to 2021*.

Our view is that much greater clarity is required in our regulatory system, and that the system needs to be strengthened. It should be clear to anyone in the community where to go to report an incident of abuse, neglect, or poor service towards a person with disability. We should feel comfortable that these reports will be followed up and that there will be consequences for breaches and unlawful behaviour. To do this, we need state and federal jurisdictions to work together more seamlessly to deliver a straightforward experience for community members, and we need stronger powers within jurisdictions.

We also need regulators that have the power to conduct investigations and address problems without the need for a complaint. Regulatory systems that rely only on complaints can become skewed to addressing issues that people capable of making complaints raise but may leave more serious issues unaddressed if there are no complaints about them.⁸

The Australian Human Rights Commission recommends six “essential elements of a quality, safeguarding and oversight system” for disability and mainstream services,⁹ which we suggest should form the basis of Victoria’s approach:

- a human rights-based approach
- a connected and integrated system
- independent oversight and monitoring
- robust prevention and response elements
- accessibility for people with disability
- continuous systems improvement through data.

We also note the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) is examining quality and safeguarding arrangements and may make recommendations on how to strengthen these systems when it reports in 2023, which we urge the government to consider when they are released.

Considering a single-purpose regulator

We suggest the Victorian safeguarding system should be changed to establish a specific regulatory agent, for example a Disability Commissioner or Disability Inclusion Commissioner, who is responsible

⁷ A series of articles was published by Crikey in late 2020. This first piece in the series is available at: <https://www.crikey.com.au/2020/08/11/ndis-disability-watchdog-abuse-neglect/>.

⁸ Hardy, T. (2021). ‘Digging into Deterrence: An Examination of Deterrence-Based Theories and Evidence in Employment Standards Enforcement’, *Industrial Law Journal*, 145-146, 156.

⁹ Australian Human Rights Commission. (2018). *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings*. Sydney.



for implementation of the Act. We see this role as including positive duties, as well as compliance responsibilities. This Commissioner would be responsible for advocating for the rights of people with disability and promoting community inclusion, as well as examining complaints and reports relating to people with disability in Victoria, conducting own-motion/systemic inquiries, and overseeing implementation of the state disability plan and organisations' disability action plans.

We believe introducing an overarching Commissioner for disability inclusion would address some of the key gaps that currently exist, particularly around rights advocacy and promotion, accessible and easy-to-understand complaints mechanisms, and independent oversight for implementing disability action plans and relevant inclusion measures.

There is precedent to having a single purpose Commissioner in Victoria, with others including the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, the Commissioner for LGBTIQ+ Communities, and the new Public Sector Gender Equality Commissioner.

The functions of these roles vary, but they are responsible for key equality issues in our state and include positive duties around promoting inclusion for particular cohorts of people experiencing inequality. The Public Sector Gender Equality Commissioner is responsible for the implementation of the *Gender Equality Act 2020*, including monitoring organisations' Gender Equality Action Plans, and "plays a leadership role in promoting gender equality in the Victorian community and workplaces".¹⁰

The legislated functions of the Commission for Children and Young People (CCYP) include:¹¹

- Provide advice to Ministers, Government Departments, health services and human services about policies, practices and the provision of services relating to the safety or *wellbeing* of vulnerable children and young persons
- *Promote the interests* of vulnerable children and young persons in the Victorian community
- Monitor and report to Ministers on the *implementation and effectiveness* of strategies relating to the safety or *wellbeing* of vulnerable children and young persons.

The responsibilities of the CCYP for considering and promoting the interests and wellbeing of children and young people (in italics above) bring a positive emphasis to the role/ They also focus on social inclusion, which is currently a gap in the disability safeguarding environment, where the focus tends to be more on safety in particular settings. We believe similar functions as the CCYP in a new Disability Commissioner role would be valuable to support the safety, wellbeing and inclusion of people with disability in Victoria. Similarly, the strong advocacy focus of the Victorian Commissioner for LGBTIQ+ Communities' role, providing advice to government and working with community stakeholders to build inclusion and understanding of diversity, would be useful to consider for the Disability Commissioner.

The new Commissioner's remit could encompass the important work done by the Disability Worker Commissioner and the DSC. They would be required to work collaboratively with other regulatory bodies, such as the Office of the Public Advocate, the NDIS Quality and Safeguards Commission, and the Victorian Ombudsman, to ensure all complaints and reports are appropriately followed up, in a whole-of-government 'no wrong door' approach.

Current regulators have critical functions in our safeguarding environment but there are gaps between their scope, and they do not currently have the mandate to focus on the experiences of

¹⁰ <https://www.genderequalitycommission.vic.gov.au/the-public-sector-gender-equality-commissioner>

¹¹ *Commission for Children and Young People Act 2012*, Part 2.



people with disability across the service system. The new role would be able to fill gaps between current regulators and bring knowledge and understanding of the specific experiences of people with disability.

The new Commissioner should have own motion powers, so they could investigate issues pre-emptively, without relying on incoming complaints or reports. Own-motion powers were introduced for the DSC following the government's response to the *Parliamentary Inquiry into Abuse in Disability Services* in 2016, but these powers only relate to disability services. The new Commissioner's powers should extend to other services/organisations captured by the act, including government entities.

The new Commissioner should also have oversight of the government's progress against the state disability plan and be able to monitor relevant organisations' disability action plans and their inclusion progress. Currently there is no independent monitoring and oversight of these plans. We discuss this in more detail later in our submission.

Finally, we believe the Commissioner could have an important role in oversight of the Act's connection to the Victorian Social Procurement Framework, to ensure that suppliers are meeting their requirements to provide opportunities for Victorians with disability.

Definitions

How should we define 'disability' for the purpose of promoting inclusion?

In our view, the *Disability Act* needs to recognise that disability is an inherent and natural part of human diversity, and that it contributes to the richness of our community, and its definition needs to be grounded in human rights. This is in line with Victoria's Charter of Human Rights and Responsibilities, which observes that 'human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community.'¹² Disability should therefore be acknowledged and recognised as a feature of human diversity.

It is our view that disability should be described broadly in the *Disability Act*, in the same way as the national *Disability Discrimination Act*.¹³ This definition includes a broad range of impairments as well as present, past (in remission), future and imputed disabilities.¹⁴ Using an inclusive definition of disability will position the Act as a significant legislative framework for inclusion and diversity in Victoria.

The definition should also align with the United Nations CRPD. In its preamble, disability is recognised as an 'evolving concept' that 'results from the interaction between persons with impairments and

¹² *Charter of Human Rights and Responsibilities Act 2006*, Preamble.

¹³ 1992 (Cth), Section 4.

¹⁴ Kayess, R. & Fogarty, B. (2007). The Rights and Dignity of Persons with Disabilities: A United Nations Convention. *Alternative Law Journal*, 32(1), 22.



attitudinal and environmental barriers that hinder their full and effective participation in society...¹⁵ By focussing on an interaction, rather than the limitation of an individual,¹⁶ we can move towards removing barriers in society that prevent people with disability participating equally.

What other terms could we define in the Disability Act? For what purpose?

In line with other key plans and statements from the Victorian Government, we ask that the updated *Disability Act* explicitly recognises intersectionality and its impacts.

Intersectionality 'describes how systems and structures interact on multiple levels to oppress, create barriers and overlapping forms of discrimination, stigma and power imbalances'¹⁷ based on the individual traits or characteristics of a person. The Act should clearly define intersectionality and include acknowledgement that people with disability often experience compounding forms of discrimination when their identity intersects with other social categorisations such as race, gender or sexual identity, or age.

Consistent with increased recognition of spirituality's importance for many people with disability, this should be enshrined in some way into these Objectives and Principles. As part of people's identity, spirituality needs to be included as a dimension of intersectionality (note reference to 'religion' in the CRPD). Spirituality is more than wellbeing; it is the force and motivation in many people's lives for individual and communal sustenance and quality of life. Wellbeing springs from this for many people with disability. By explicitly acknowledging spirituality, and faith expression as a right and principle within the Act, subsequent policy and practice will be better able to alleviate indirect discrimination.

State disability plan

How could we strengthen the Act's provisions for the state disability plan?

We agree the definition and provisions around the state disability plan in the Act could be strengthened. We would like to see the Act confirm that the state disability plan:

- Guides a whole-of-government response to achieving inclusion for people with disability
- Is grounded in human rights, and must refer to the CRPD
- Has a clear monitoring framework with annual reporting, to observe the plan's progress against its intended outcomes.

The *Gender Equality Act 2020* contains clear provisions around reporting requirements for defined entities. 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.

¹⁵ UN General Assembly. (2007). *Convention on the Rights of Persons with Disabilities: resolution/adopted by the General Assembly, 24 January, A/RES/61/106.*

¹⁶ Commonly referred to as the 'social model of disability.

¹⁷ Victoria State Government, Family Safety Victoria. (2018). *Everybody Matters: Inclusion and Equity Statement.* Melbourne.



What should the state disability plan focus on?

Uniting and the Synod provided submissions to the state disability plan consultation in April 2021. These submissions detail our view on what should be the focus of the plan. Our key points are that the plan should:

- Describe disability in a way that reflects impairment as a feature of human diversity, and recognise that people living with disability are members of our community and have a right to participate on an equal basis
- Reflect the concept of transformative equality, as articulated in the CRPD^{18,19}
- Incorporate an intersectionality framework and a human rights approach
- Be developed, monitored, and evaluated through a genuine co-design process, via a formal consumer-convened governance group
- Include annual accessibility training for all Victorian public sector employees
- Include an outcome relating to accessibility generally, not just the built environment
- Include the development and publication of Minimum Accessibility Standards for Mainstream Services and provide appropriate complaints mechanisms.

Additionally, the consultation paper for this review notes that recent consultations have asked that the Act acknowledge 'the diversity of the needs, views and experiences of people with disability and the connection to other aspects of identity, *spirituality*, lived experience and cultural background' [emphasis added].²⁰

Through these consultations, the connection of spirituality has been noted as being significant. It is recommended that all future State Disability Plans make specific reference to it. Explicit acknowledgement of spirituality's importance in the new Act, and its concomitant faith expression, stated as a right and Principle within the Act, give rise to policy and practice emanating from State Disability Plans.

"Our call for this inclusion (in both the new Victorian Act and Plans) is bolstered by its timely and confirmed inclusion in the forthcoming National Disability Strategy 2021-2031. Following advocacy at both state and federal levels led by the Uniting Church, the Australian Department of Social Services has confirmed to us that the new national Strategy will include a focus on participation in religious and cultural life, along with relevant population measures." — Uniting Church Disability Inclusion Advocate

¹⁸ The CRPD Committee uses the term 'inclusive equality' when referring to transformative equality as outlined by Degener, T. (2016). Disability in a human rights context. *Laws*, 5(3), 35.

¹⁹ Degener, T. & Minkowitz, T. (2017). CRPD and transformative equality. *International Journal of Law in Context*, 13(1).

²⁰ Page 15 of the consultation paper.



How could we improve accountability for achieving the state disability plan's goals? How could we improve reporting on the state disability plan?

We believe monitoring and oversight of the state disability plan should be done by an independent Disability Commissioner, as outlined earlier in our submission. As part of this, the Act should include a legislative requirement for annual public reporting on progress against the state disability plan.

Specifically, there should be a monitoring/outcomes framework for the plan, with clear measures and targets. The indicators and updates provided in the 2017 and 2018 annual reports were a good start, but the data was patchy and there haven't been any updates since then. We believe that clear, measurable targets should be set to track progress against the state disability plan.

While we acknowledge and agree that many of the goals of the plan are long-term, and change may not be visible on an annual basis, annual reporting brings public accountability to the process and will help to ensure an ongoing commitment to action and resourcing for the plan. Where possible, this means we need to set targets for which data is already available.

We believe at the moment it will be more use having slightly 'less perfect' indicators against which we can measure progress, rather than strong theoretical indicators that we can't measure, because this will give us a baseline and opportunity to observe the current state and any progress made. The indicators provided in the 2017 and 2018 annual reports were comprehensive, but data was unavailable for many of them, which meant we couldn't assess where we were up to, and where we were going.

Measurement of the state disability plan should also take into account other data/measurement exercises happening at the moment, such as the pilot of the National Disability Data Asset²¹ and the soon-to-be-released Australia's Disability Strategy 2021-2031 and its outcomes framework,²² to ensure consistency with the broader policy framework for people with disability.

Disability action plans

How could we strengthen the Act's provisions for disability action plans? Who should be required to have a disability action plan?

We would like to see greater commitment from the state government to making mainstream services inclusive, and accountable when people with disability encounter barriers to access. Currently, the Disability Services Commission, which is established by the *Disability Act*, only receives complaints about the provision of disability services by regulated disability service providers in Victoria. Similarly, the NDIS Quality and Safeguards Commission can only regulate and investigate NDIS providers.

This leaves a significant gap in safeguarding and quality oversight for people with disability when accessing mainstream (non-disability specific) services in Victoria. One of the only ways that mainstream services can formally demonstrate and improve their accessibility is through disability action plans. As outlined earlier in this submission, we suggest the establishment of a new, independent Disability Commissioner role, which would have oversight for disability action plans and

²¹ See Asset website: <https://ndda.gov.au/>.

²² See news from the Australian Social Services Minister in August 2021: <https://www.dss.gov.au/disability-and-carers/a-new-national-disability-strategy/>.



be able to receive complaints and conduct inquiries about access and inclusion issues across our service system, not just for disability services.

The *Disability Act* currently holds that public sector bodies must have disability action plans and report on their progress in their annual reports. Uniting and the Synod believe that the scope of organisations required to develop disability action plans should be broadened to include all organisations that receive funding from the state government above a reasonable threshold. This should be implemented as standard practice in service contracts and requests for tender; similar to the way that many requests for tender require organisations to provide information, meeting the Social Procurement Framework and their environmental sustainability practices.

Additionally, as discussed above, we believe there should be independent monitoring of organisations' progress against disability action plans, through a new Disability Commissioner. A model for this could be the recently established Public Sector Gender Equality Commissioner. The *Gender Equality Act 2020* sets out the Commissioner's oversight arrangements, and obligations for 'defined entities' (organisations within scope). Each of these organisations is required to develop a Gender Equality Action Plan and submit it to the Commissioner, then provide a progress report about its implementation every two years. These organisations are also required to undertake gender impact assessments for relevant work and report to the Commissioner on them every two years.

This is a strong model that clearly sets out community expectations around gender-equitable practice and has built-in accountability mechanisms for organisations. If a similar model was introduced through the *Disability Act* with a new Commissioner, it would ensure organisations, including government departments, were accountable for their disability action plans and for their progress on access and inclusion. This would promote greater awareness of access and inclusion in service delivery and would ensure organisations were implementing their commitments to accessibility in practice. We believe these disability action plans should be shared publicly via an online register, so that they are transparent and accessible for everyone in our community. This is already done by the Australian Human Rights Commission with its register of Disability Discrimination Act Action Plans.²³

What should a disability action plan focus on?

We agree with the purpose of a disability action plan outlined in the current Act, namely:

- a) reducing barriers to persons with a disability accessing goods, services and facilities
- b) reducing barriers to persons with a disability obtaining and maintaining employment
- c) promoting inclusion and participation in the community of persons with a disability
- d) achieving tangible changes in attitudes and practices which discriminate against persons with a disability.

However, we ask that an additional point is added, relating to upholding the human rights of people with disability. This could be something like: 'promoting the human rights of people with disability, in line with the United Nations Convention on the Rights of Persons with Disabilities,' added after point (b).

Additionally, relating to point (a), Uniting and the Synod propose the state government and the Disability Services Commission co-design new minimum accessibility standards for mainstream services, that outline the minimum standards organisations should meet so they are accessible to as many people with disability as possible. We expect the standards would include web accessibility guidelines, use of easy read, plain English, and image descriptions, provision of captioning/Auslan

²³ Available: <https://humanrights.gov.au/our-work/disability-rights/register-disability-discrimination-act-action-plans>.



interpreting when needed, social stories describing key venues and processes, as well as physical accessibility in their venues.

We would also like to see a legislative requirement for the state government and local governments to employ people with disability to draft their disability action plans and monitor their implementation. This would give people with disability assurance that government is committed to a co-design approach and improve the labour force participation of people with disability throughout Victoria. The principles should be followed up in accountability and reporting requirements.

The Act should also include a legislative requirement that disability action plans must include certain components and meet certain standards, set out in detailed guidance from the government. This is consistent with the approach taken through the *Gender Equality Act* for Gender Equality Action Plans.²⁴ It is essential that this guidance is co-designed with people with disability and reviewed regularly (we suggest every four years, in line with state disability plan timing) to ensure it reflects contemporary knowledge of disability, action, and inclusion.

Reporting annually against these minimum standards should be compulsory for organisations required to have a disability action plan through the Act and encouraged for all others. The state government could provide guidance to Victorian organisations and businesses on how to improve their inclusivity.

How could we improve accountability for achieving the goals of a disability action plan? How could we improve reporting on disability action plans?

A clear complaints mechanism should be provided for disability action plans, and promoted to the community, so people are aware of their rights and where to go if they have been breached. We find there is currently confusion in the community about the number of accountability agencies currently involved in the lives of people with disability. We commend the work by many agencies to provide a joined up, 'no wrong door' approach, however, we believe there is still much work to be done to make sure community members know where they can complain or report incidents when needed, and to make sure these are investigated and resolved appropriately.

In the Uniting Vic.Tas submission to the Victorian state disability plan in April 2021, we noted a consumer's comment that:

"If the Victorian government is committed to making the Victorian community more accessible and inclusive, it should put its words into action and hold those who do not work towards building an inclusive community accountable." — Uniting consumer with disability

²⁴ See Commission for Gender Equality in the Public Sector website, which notes: "This guidance has been created to help you develop your GEAP. This guidance is issued under section 47 of the Act, which means defined entities must have regard to it when complying with their obligations. The guidance sets out what is required to be included in your GEAP under the Act. It also provides additional recommended steps that you can follow to ensure your GEAP is clear, actionable and based on data and meaningful consultation." <https://www.genderequalitycommission.vic.gov.au/gender-equality-action-plans>



We believe the introduction of a new Disability Commissioner would fill these gaps and provide a centralised complaints and monitoring mechanism. This should be clearly articulated in the legislation, and adequate resourcing allocated. Resourcing should also be provided for promotion work, like the current public awareness campaign being undertaken by the Victorian Disability Worker Commission,²⁵ and the ongoing work done by the Disability Services Commission through the 10+ year 'It's OK to Complain!' campaign.²⁶

Progress against disability action plan implementation should continue to be reported each year in the entity's annual report. De-identified information about complaints that have been received should also be published as part of this, to improve transparency and accountability.

Case Study: Synod Disability Action Plan

At its meeting of 15 June 2019, Synod Standing Committee resolved (19.40.3):

- a) To endorse the Disability Action Plan, materially in the form presented, as attached to the original of these minutes; and
- b) To recommend the approval of the Disability Action Plan by the Synod at its meeting in July 2019.

The 2019-2022 Plan has been operational since Synod's adoption of the resolution; with the Disability Inclusion Advocate having responsibility for its oversight.

In 'welcoming and entertaining strangers, we welcome angels without knowing it' (Hebrews 13:2), this Plan builds on previous Plans of 2000-3 and 2016-2018. Such Plans are an intentional means of eliminating discrimination towards people labelled by disability and aim to enrich the Body of Christ.

Faith communities are not exempt from application of the Disability Discrimination Act 1992 (DDA), and statutory entities are required to develop Disability Action Plans. Whilst faith communities are not mandated to do so, this Synod is the only known religious entity to have done so. Over the past 20 years each Plan has been submitted to the equivalent federal Human Rights Commission as a demonstration of the Synod's commitment.

²⁵ See, for example, <https://www.vdwc.vic.gov.au/about/news-resources-media/resource/new-resources-service-providers-and-advocacy-groups>, webpage dated 22 September 2021.

²⁶ State of Victoria, Disability Services Commissioner. (2017). *Disability services complaints data (2007-15): What have we learnt so far?*. Melbourne.



Community visitors

What should the role and powers of community visitors be within the changed NDIS service environment?

We acknowledge a balance is required between ensuring safe and quality service delivery, and respecting individuals' agency and autonomy. This balance has often been discussed as the NDIS and the Quality and Safeguards Commission have rolled out across the country. Some people experience greater barriers to reporting harm, having it investigated, and a greater risk of retribution. These groups include people with complex communication needs and people living in supported disability accommodation. Community Visitors can play an important role here, although we recognise that allowing visits against the wishes of a vulnerable person can be a further violation of their rights and their autonomy.

We note the Commonwealth Department of Social Services review of community visitor schemes (CVS) concluded:²⁷

At their best, CVS achieve important outcomes for people with disability in services, encouraging them to express their views, listening, building capacity in asserting rights or linking with supported decision-making processes and advocates. Visiting in person and talking assists people with disability to build confidence and experience in expressing their views and needs. By tracking service responses to issues CVS can also demonstrate that it is worth complaining, as well as being safe to do so.

The Act could be amended to better reflect the conclusion, by making one of the objectives of community visitors to build capacity in asserting rights and linking people with supported decision-making processes and advocates when appropriate to do so.

The review also concluded that "safeguarding needs a holistic approach within which community visiting should operate."²⁸

The review pointed out the CVS were consistent with the obligations of Article 16 of the UN CRPD, particularly 16.3:

In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

In favour of allowing community visitors access to examine the situation of vulnerable people, the review commissioned by the Department of Social Services concluded:²⁹

Some people with disabilities may be particularly vulnerable to abuse and neglect because of the nature of their impairment, limited communication, reliance on paid workers for personal care of their accommodation situation. It may be very difficult for these individuals to self-advocate or recognise treatment as abusive. For these individuals, an independent and

²⁷ Westwood Spice. (2018). *Community Visitor Schemes Review*, Final Report, p.8.

²⁸ Ibid., p.9.

²⁹ Ibid., p.26.



proactive oversight mechanism that does not need to be triggered by a complaint is important.

The review also found anecdotal evidence that vulnerable people were more likely to be open with community visitors than with staff from other regulatory bodies,³⁰ and argued in favour of community visitors being able to make unannounced visits:³¹

The ability to make unannounced visits has strong preventative element, and avoids the best behaviour scenario of a planned audit. It also provides the opportunity for early intervention – concerns can be addressed immediately and at source with the relevant teams rather than escalating into abuse or neglect.

However, as found in the review, vulnerable people and their families were rightly frustrated when their right to privacy had been impacted by community visitors, but there was no improvement in issues of concern that had been raised with the community visitor.³² Criticism was made of community visitors who did not follow up on issues previously raised or who were concerned with trivial matters and missed major problems. Cultural competence, access to interpreters when needed, and cultural safety were also found to be important.³³

The DSC had previously pointed out the low rate of any people using a complaints system. The Commissioner pointed to research that had found that for problems of mistreatment, quality and incompetence, people will only raise a complaint with front-line staff 5-30 per cent of the time.³⁴ Rates of complaints by people accessing disability services were expected to be lower. The Commissioner identified the following reasons why people with a disability or their family members are reluctant to raise issues with their service provider or with a third party:³⁵

- Fear of retribution or withdrawal of service for making a complaint
- Not being aware of their right to complain
- Not wanting to be seen as a 'troublemaker'
- Concern about how it will affect their relationship with the service provider
- A lack of information about the process for making a complaint
- Previous negative experiences associated with having tried to make a complaint
- A sense of 'gratefulness' in a competitive environment for services
- Lack of service options (in rural or remote locations).

Given the identified limitation of relying just on complaints, allowing community visitors to initiate unannounced visits provides an essential additional safeguard.

Thus, we support the *Disability Act* maintaining and expanding the safeguard of community visitors being able to make unannounced visits. However, the impact on the privacy of vulnerable people needs to be offset by the CVS continuing to demonstrate that it is making the lives of the vulnerable

³⁰ Ibid., p.27.

³¹ Ibid., p.30.

³² Ibid., p.33.

³³ Ibid., p.34.

³⁴ Harkin, L. (2015). *Submission to Victorian Family and Community Development Committee inquiry into abuse in disability services*, 10 June, p.10.

³⁵ Ibid.



people better and empowering them to advocate for their rights when that is possible. Further, the community visitors' arrangements should be adequately resourced. For example, community visitors should be provided with equipment for visits that allows them to make their reports electronically, rather than having to make written reports that then need to be transcribed. Copies of the reports can still then be provided to the vulnerable person and their service provider, where that would currently be done.

The changes to the Act in 2019 were made with the clear intention that community visitors should be able to broadly visit disability accommodation. The Act should be amended to capture the new forms of accommodation the National Disability Insurance Agency has introduced. The amendments should be made flexible enough to capture any future forms of disability accommodation that the NDIA might fund in the future.

We note that in Queensland, community visitors are explicitly able to visit disability funded facilities for children, including respite care. Such a measure should be considered for Victoria.

Restrictive practices

How could the authorisation model be more consistent? How could we strengthen the authorisation model?

Uniting Vic.Tas and the Synod support the recommendation of the Office of Public Advocate (OPA) to the Disability Royal Commission that the use of restrictive practices be based upon the human rights principles contained within the:³⁶

- UN CRPD
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with regards to the monitoring of places of civil and criminal detention
- Australian Law Reform Commission national decision-making principles.

Additionally, we note that Victoria has been a signatory to the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector since 2014.³⁷

³⁶ Pearce, C. & Chesterman, J. (2020). *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. Office of the Public Advocate, p.4.

³⁷ Available: [National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector | Department of Social Services, Australian Government \(dss.gov.au\)](https://www.dss.gov.au/national-framework-reducing-eliminating-use-restrictive-practices-disability-service-sector).



The Disability Royal Commission received submissions indicating the use of restrictive practices has caused trauma, re-traumatisation and in some cases led to suicidal ideation.³⁸ It was also told that when the use of restrictive practices is normalised, it trivialises interfering with the rights and freedoms of people with disability, and that this can constitute a form of 'lawful violence' that people without disability don't experience.^{39,40}

Concerningly, the Royal Commission heard reports that restrictive practices were sometimes used for "operational convenience".⁴¹

Evidence provided to the Royal Commission identified that a lack of resources and lack of workforce training, as well as understaffing, low pay, and workforce casualisation, contribute to the prevalence of restrictive practices.⁴² Uniting and the Synod recommend the government amends the Act to require five yearly assessments of the system to identify systemic factors driving the use of restrictive practices and to make recommendations for addressing these drivers.

We share OPA's concern about the use of restrictive practices by providers that are not registered under the NDIS or covered by Part 7 of the *Disability Act*.⁴³ OPA raised concern that there is insufficient guidance in the NDIS Code of Conduct to explain to unregistered workers and providers as to what constitutes a restrictive practice and when to report its use. If the concern cannot be resolved by persuading the NDIS Quality and Safeguards Commission to put in place sufficient safeguards, then the *Disability Act* should be amended to make sure there is proper oversight of the use of any restrictive practices by unregistered workers and providers. Ideally, a worker or provider should be required to register if they are to use restrictive practices.⁴⁴

³⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2021). *Overview of responses to the Restrictive practices Issues paper*, p.8.

³⁹ Ibid., p.8.

⁴⁰ Women with Disabilities Australia. (2021). *Response to Restrictive Practices Issues Paper of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. July, WWDA: Hobart, Tasmania.

⁴¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2021). *Overview of responses to the Restrictive practices Issues paper*, p.5, 10.

⁴² Ibid., p.9.

⁴³ Pearce, C. & Chesterman, J. (2020). *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. Office of the Public Advocate, p.14.

⁴⁴ Ibid., p.19.



As recommended by OPA, the use of certain restrictive practices should be proscribed.⁴⁵ While Part 6B and Part 7 of the Act allow the Senior Practitioner to direct specific providers or specified classes of providers not to use certain restrictive practices, the Act itself should establish a regulated list of restrictive practices that are proscribed. These would include aversion therapy or 'consequence driven practices'.⁴⁶

The Royal Commission heard evidence that behaviours deemed to require restrictive practices in response were often a form of communication that reflects unmet need. These behaviours can be the result of the person not being provided with the health, emotional and cultural support they need.⁴⁷ The Act should create mechanisms by which such unmet needs can be identified by multiple sources, including the independent person, the Senior Practitioner and Community Visitors. The Act should also contain a mechanism by which a provider must take reasonable actions to address the unmet needs to reduce or remove the need for restrictive practices. Enforcement of these obligations could be monitored by the overarching Commissioner position we recommend above.

As a further safeguard over the use of restrictive practices, a person's guardian, parent, or other person nominated by the person being subjected to the restrictive practices should be required to be notified whenever restrictive practices are being used.⁴⁸ Consideration should also be given to whether this should be an approval process, rather than notification, to further strengthen the safeguards.

Forensic disability services and sentencing

How could we improve the link between criminal orders and a person's engagement with disability services, and how should advice on this be provided to the courts? Do you think this is best supported through legislation or other means?

While data is limited in this area, a wide range of sources indicate there are more people with disability involved in the criminal justice system than we would expect based on population rates, especially for younger people. For example, around 22 per cent of people across Australia aged 18 years and over have a disability, while this was 29 per cent for prison entrants.⁴⁹ Worryingly, the

⁴⁵ Ibid., p.19.

⁴⁶ Ibid., p.19.

⁴⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2021). *Overview of responses to the Restrictive practices Issues paper*, p.9.

⁴⁸ Ibid., p.19.

⁴⁹ Australian Institute of Health and Welfare. (2019). *The health of Australia's prisoners 2018*. Cat. no. PHE 246. Canberra: AIHW.



Australian Institute of Health and Welfare recently found that “of those aged 18–34, 1 in 12 (8%) people in the community, and 1 in 4 (26%) prison entrants reported a disability.”⁵⁰

A submission to the Disability Royal Commission from the Supreme Court of Victoria highlighted research showing 48 per cent of children in a youth justice study had an ‘identifiable disability or impairment.’⁵¹ Several reports indicate even higher proportions in some youth justice facilities, with data from Western Australia and South Australia showing around 90 per cent of young people in these facilities have a disability-related need.⁵²

The reasons behind this over-representation are complex, but a key contributing factor is access to appropriate supports throughout the life-course, as well as poverty and inadequate income support. Nationally, almost 40 per cent of people with disability are living in poverty.⁵³

More must be done to support people with disability across their lives in Victoria, including in the interactions between the justice system and disability services. Submissions to the Disability Royal Commission’s criminal justice issues paper illustrate a range of challenges in this area, including with the interactions between the NDIS and the justice system, which can inhibit access to appropriate supports, and challenges in the post-release period.

There are a range of disability-specific and broader measures that the state government could consider, to improve these connections.

We understand Justice Liaison Officer positions were introduced in late 2019 to bridge the gap between state justice systems and the NDIS,⁵⁴ however there is little information available publicly about the effectiveness of these positions. We recommend an independent evaluation of this program be undertaken, and relevant recommendations implemented by the Victorian Government and the National Disability Insurance Agency.

We recommend that the Victorian Government provide all incarcerated people with appropriate transitional planning for post-release, including direct referrals to disability services and other funded in-community supports. This process must be person-centred, meeting each individual’s specific needs and aspirations, including access and cultural needs, so that plans are genuinely relevant to the person’s post-incarceration life.

Access to stable, appropriate housing is also essential. In Victoria, nearly half of the people leaving prisons expect to be homeless when released. At Uniting, our homelessness services support those

⁵⁰ Ibid., p.82.

⁵¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2020). *Overview of responses to the Criminal Justice System Issues paper*. December.

⁵² Children and Young People with Disability Australia. (2020). *Response to Disability Royal Commission Criminal justice system issues paper*. Melbourne: CYDA.

⁵³ Davidson, P., Bradbury, B., & Wong, M. (2020). *Poverty in Australia 2020: Part 2, Who is affected? ACOSS/UNSW Poverty and Inequality Partnership Report No. 4*. Sydney: ACOSS.

⁵⁴ Council of Australian Governments (COAG) Disability Reform Council. (2019). *Communiqué 9 October 2019*.



who have recently left incarceration and experience homelessness. COVID-19 has thrown Victoria's shortage of social and affordable housing into stark relief. Housing Establishment Fund brokerage provides hotel and motel accommodation for a limited time, but the system has not been reviewed in over 10 years. The Victorian Government should provide all people leaving incarceration with a housing solution, based on the Housing First principle. Additionally, we ask the Victorian Government to increase social and affordable housing in our state to bring it into line with the national average (6,000 dwellings per year in the long-term). By doing so, everyone leaving prison should have a safe, affordable, and accessible home to go to.

Finally, we note there is an inquiry into Victoria's criminal justice system taking place at the moment. It is crucial that the review of the *Disability Act* takes any relevant lessons from this inquiry on board, and vice versa.