

# Review of the Disability Act 2006

Consultation paper summary

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## Minister's foreword

We are reviewing the *Disability Act 2006* (Vic) now that the National Disability Insurance Scheme (NDIS) is in place. It is important that Victorian legislation is contemporary and fit-for-purpose for the more than 1.1 million Victorians with disability.

The review offers an opportunity for us to reconsider the Act. This will ensure it complements the NDIS and drives whole-of-government action.

There is more to do to promote disability equality and pursue disability inclusion. This is particularly the case in helping to create enabling environments and to change negative attitudes. Breaking down barriers and ensuring people with disability can take part and be included in all aspects of our community needs a joint effort from us all.

We welcome the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The royal commission offers a critical opportunity to advocate for improvements to how disability services are delivered across the country, and to ensure all people with disability are treated with dignity and respect.

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Families,  
Fairness  
and Housing

The voices, experiences and aspirations of people with disability are essential to our review process.

I encourage all Victorians to have their say about how we should design future disability legislation.

**Hon Luke Donnellan MP**

Minister for Disability, Ageing and Carers

# 1 Introduction

## 1.1 Why is Victoria reviewing the Disability Act?

In 2018 and in 2019, Victoria changed the Disability Act to help with the move to the NDIS as part of the first stage of the review.

After moving to the NDIS, Victoria has:

- moved away from most direct delivery of disability services
- given up most responsibilities for regulation of disability services to the NDIS Quality and Safeguards Commission, including most responsibilities of the Disability Services Commissioner, while keeping responsibility for community visitors
- kept functions of the Disability Services Commissioner for disability services that the Department of Families, Fairness and Housing (the department) provides, funds or contracts
- stayed responsible for rights and safeguards for people in compulsory treatment as well as overseeing the authorisation of restrictive practices in disability services
- set up the Victorian Disability Worker Commission, the Victorian Disability Worker Commissioner and the Disability Worker Registration Board of Victoria
- stayed responsible for forensic disability services and coordinating these services with the state's justice system
- taken on new shared responsibilities to integrate mainstream services with the NDIS as smoothly as possible.

The second stage of the review will consider more changes that are needed after moving to the NDIS. It will also look at how to improve the state's important role in tackling inequality and promoting inclusion.

## Background

The main elements of the Disability Act include:

- powers and functions relating to monitoring, funding and delivering disability services, collecting and analysing data, and creating policies such as priority access to disability services
- registering disability service providers and making sure they meet quality and safety standards
- residential rights, including in group homes

- safeguards and promoting the rights of people in compulsory treatment and under restrictive practices, including the role of the Senior Practitioner
- the need to develop a state disability plan every four years and for some public sector agencies to develop disability action plans
- setting up the Disability Services Commissioner, an independent oversight body, to manage complaints and review incidents of abuse and neglect
- the community visitor program that gives volunteers the power to visit residential disability services to ensure service providers are giving the appropriate support to residents
- setting up the Victorian Disability Advisory Council, which gives advice to the minister and oversees the state disability plan.

## 1.2 Scope of the review

The review will consider other reforms and developments to ensure the Disability Act is in line with:

- Victoria's changing role in direct service delivery, including the state's continuing responsibility to deliver some disability services and ensure support continues for those who previously accessed services under the Act
- changes to how we regulate disability and other social services
- changes to better protect human rights, particularly in compulsory treatment and the justice system, and in the use of restrictive practices
- Victoria's ongoing role in promoting human rights, inclusion and participation.

The timeline for finishing the review includes a Bill to change the Disability Act. We expect to introduce a Bill into parliament in the second half of 2022.

## 1.3 How to contribute

We encourage all Victorians to take part in the review. There are different ways you can contribute to the review on the [Engage Victoria website](http://www.engage.vic.gov.au/disability-act) <<http://www.engage.vic.gov.au/disability-act>>. You can make a written, video or audio-recording submission.

We will consider all feedback and submissions we receive. This information will inform our ideas and proposals.

You can submit via the Engage Victoria website or by [emailing the Disability Act Review team](mailto:disabilityactreview@dhhs.vic.gov.au) <[disabilityactreview@dhhs.vic.gov.au](mailto:disabilityactreview@dhhs.vic.gov.au)> or by post to:

Disability Act Review  
Disability and Communities Branch  
Department of Families, Fairness and Housing  
Level 4, 50 Lonsdale Street, Melbourne VIC 3000

Please tell us if you want your submission to be private. We will publish all other submissions we receive. We will treat these submissions as public documents, which means members of the public can get copies.

The full version of the consultation paper is available from the Engage Victoria website <<http://www.engage.vic.gov.au/disability-act>>.

Contact the review team for a braille version of the paper. You can also get the paper in the following formats on the Engage Victoria website:

- Easy Read
- Auslan
- e-text and audio.

To get in touch with the review team or for more information about the review, email the Disability Act Review team <[disabilityactreview@dhhs.vic.gov.au](mailto:disabilityactreview@dhhs.vic.gov.au)> or phone 03 9456 3158 using the National Relay Service 13 36 77 if needed.

## 2 Background

### 2.1 The changing policy landscape

#### United Nations Convention on the Rights of Persons with Disabilities

The Victorian Government has responsibilities to follow the United Nations Convention on the Rights of Persons with Disabilities. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) sets out the basic human rights and responsibilities of all people in Victoria.

The UN Convention centres on equality and non-discrimination and has roadmaps to promote disability inclusion. The UN Convention stresses the need to identify and remove barriers and that without accessibility there cannot be inclusion nor the equal enjoyment of human rights.

#### Recent and ongoing reforms

This review of the Disability Act relates to other reforms and inquiries recently completed or underway.

##### Victoria

- The department is doing work to reform regulation of the social services safeguarding system. This will involve considering the functions of the Disability Services Commissioner after the move to the NDIS. It will look at options for keeping an independent disability complaints function within broader social services arrangements.
- A new social services regulatory framework in the Social Services Regulation Bill 2021 was recently introduced into Parliament and is expected to be operational in 2023.
- The Department of Health has begun a review of the *Mental Health Act 2014* (Vic) following the final report of the Royal Commission into Victoria's Mental Health System.
- The Victorian Parliament is running an inquiry into Victoria's criminal justice system.
- The Department of Justice and Community Safety is developing a standalone Youth Justice Bill and looking at aspects of the *Sentencing Act 1991* (Vic).

##### National

- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is expected to deliver its final report in the second half of 2023.
- The Royal Commission into Aged Care Quality and Safety delivered its final report in February 2021.
- The national review of the NDIS Act is underway.
- National discussions on the role of restrictive practices and community visitors under the NDIS are taking place.
- Public consultation is complete for the next national disability strategy (*Australia's disability strategy 2021–2031*). States and territories have agreed to progress the strategy for formal endorsement by governments.

## Consultations

The Disability Act Review Advisory Group gives the department advice on the Disability Act review. Graeme Innes AM, Australia's former Disability Discrimination Commissioner, chairs the group. The group includes people with disability, peak bodies, representative organisations and members of the Victorian Disability Advisory Council.

We asked for public views about strengthening under the Disability Act in 2019 through the *State disability plan 2021–2024 consultation paper*. Public workshops took place in early in 2020 and then consultations resumed online early in 2021 after being delayed by the pandemic.

We also held targeted stakeholder discussions with:

- peak bodies
- people with disability who are Aboriginal, LGBTIQ+ or culturally and linguistically diverse
- young people
- people with intellectual disability
- people in residential services.

Common themes raised in consultations included:

- taking a human rights approach based on the UN Convention
- promoting consistency and strengthening accountability across government for disability inclusion
- understanding and addressing ableism (negative attitudes towards people with disability)
- the benefits of consistent and thorough data collection and reporting
- acknowledging diversity and intersectionality (the ways different aspects of a person's identity can overlap and contribute to further disadvantage and discrimination)
- more responsibility for outcomes under the state disability plan and disability action plans
- improving the scope and scale of how we protect, and uphold the rights of, people with disability ('safeguarding')
- the importance of advocacy, self-advocacy and supported decision making.

## 3 Review of the Disability Act 2006

Without accessibility there can be no participation – which compounds the forms of exclusion experienced by people with disability.

– The Attitude Foundation

### 3.1 Introduction: review of the Disability Act 2006

In this section of the paper, we outline key parts of the Disability Act.

### 3.2 Purpose

#### Objectives and principles

##### Issues to consider: Objectives and principles

- Most Victorians who used to get services under the Disability Act now get them from the NDIS.
- The Act does not include principles for mainstream services that integrate with the NDIS such as education, health, housing, transport and justice.
- The Disability Act does not include provisions specific to disability advocacy services.
- Current principles do not specify the importance of Aboriginal cultural safety and Aboriginal self-determination, intersectionality or supported decision-making.
- It has been raised that:
  - the principles in the Act may not reflect a comprehensive and contemporary understanding of disability, including transformative equality within the UN Convention
  - some groups have specific needs and may experience extra disadvantage due to intersectional attributes or aspects of their identity – for example, women, children and young people, Aboriginal people, people from culturally and linguistically diverse backgrounds and people who are LGBTIQ+.

##### Background: Objectives and principles

##### Purpose and objectives: Objectives and principles

The main purposes of the Disability Act include providing a legislative scheme for people with disability in Victoria that affirms and strengthens their rights and responsibilities. The Act recognises that this requires support across government and in the community.

The objectives of the Disability Act include:

- advancing the inclusion and participation of people with disability in the community
- promoting a whole-of-government approach to supporting the needs and aspirations of people with disability

- supporting the delivery of high-quality disability services
- promoting and protecting the rights of people using services covered by the Disability Act.

### **Principles: Objectives and principles**

The principles in the Disability Act state that people with disability have the same rights and responsibilities as other members of our community. The Act also says people with disability should be empowered to exercise those rights and responsibilities. These include the right to:

- be given respect for their human worth and dignity as individuals
- live free from abuse, neglect or exploitation
- realise their individual capacity for physical, social, emotional and intellectual development
- exercise control over their own lives
- take active part in the decisions that affect their lives and get information and support where necessary to make this happen
- get information and communicate in a way that meets their communication and cultural needs
- services that support their quality of life.

### **Questions: Objectives and principles**

1. What objectives should the Disability Act have?
2. How could the Act support the UN Convention?
3. How could we improve the principles in the Act?
4. What mechanisms do we need to support the principles in the Act?
5. How could the Act support disability advocacy?

## **Definitions**

### **Issues to consider: Definitions**

- The Disability Act includes provisions both to promote inclusion and for disability service delivery. However, the Act defines 'disability' only for the purpose of specifying who can get disability services.
- In the Act, the meaning of 'disability' does not include psychiatric impairment, psychosocial disability or cognitive impairment.
- New South Wales and South Australia have drawn from the UN Convention to create their definitions and laws for promoting disability inclusion.
- Stakeholders commented that the Act's definitions may no longer be suitable and should reflect a more contemporary understanding of disability.

### **Background: Definitions**

The Disability Act defines 'disability', 'intellectual disability', 'developmental delay' and terms relating to services such as 'residential service', 'group home', 'residential treatment facility', 'disability service' and 'disability service provider'.



The Act does not define social terms such as ‘ableism’, ‘barriers’ or ‘inclusion’.

The Disability Act defines ‘disability’ in relation to a person as:

- (a) a sensory, physical or neurological impairment or acquired brain injury or any combination thereof, which—
  - (i) is, or is likely to be, permanent; and
  - (ii) causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and
  - (iii) requires significant ongoing or long-term episodic support; and
  - (iv) is not related to ageing; or
- (b) an intellectual disability; or
- (c) a developmental delay.

Article 1 of the UN Convention says that disability comes from interactions and barriers and includes people:

... who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

This definition emphasises the need to address inequality and discrimination by focusing on removing barriers and changing the way we see disability.

If we change definitions, principles or other aspects of the Disability Act, we also need to consider potential impacts on access to supports and services.

### **Questions: Definitions**

6. How could we improve the definitions of ‘disability’, ‘intellectual disability’ and ‘developmental delay’?
7. How should we define ‘disability’ for the purpose of promoting inclusion?
8. What other terms could we define in the Disability Act? For what purpose?

## **3.3 Inclusion**

Why can't Victoria become the most disability friendly place in Australia?  
– City of Greater Bendigo Disability Inclusion Reference Committee

### **State disability plan**

#### **Issues to consider: State disability plan**

- The UN Convention says that limits on people with disability taking part and being included are due to barriers such as hard-to-access environments or negative attitudes.
- A key objective of the Disability Act is to promote a whole-of-government approach to participation and inclusion by identifying and removing barriers.

- Principles in the Act focus on human rights. The Act acknowledges that government and community support may be needed for some people with disability to exercise those rights.
- The role of consistent and comprehensive data collection in informing policy, setting goals, measuring progress, evaluating efforts and strengthening accountability.
- The state disability plan promotes whole-of-government action and has input from other portfolios across government.
- The state disability plan is the main way through which we implement the national disability strategy in Victoria.
- Stakeholders suggested that the Act should include a focus on addressing inequality.

## **Background: State disability plan**

The Disability Act says that a state disability plan must be prepared every four years and must set goals to advance the objectives and principles of the Act. The state disability plan must also:

- identify the needs of people with disability
- set goals and priorities for the support of people with disability
- identify objectives and policy priorities for developing and delivering services for people with disability
- identify ways to achieve those objectives and priorities
- consider the different needs of people with different types of disability, who may require different strategies.

Some states and territories have legislation that requires them to create and report on their state disability plans, including tabling annual reports in parliament. At the moment, annual reporting in Victoria is done by agreement with the minister.

*Absolutely everyone: state disability plan 2017–2020* introduced an outcomes framework that set out the following main areas of daily life where Victoria is aiming to increase participation and inclusion:

- inclusive communities
- health, housing and wellbeing
- fairness and safety
- contributing lives.

## **Questions: State disability plan**

9. How could we strengthen the Act's provisions for the state disability plan?
10. What should the state disability plan focus on?
11. How could we improve accountability for achieving the state disability plan's goals?
12. How could we improve reporting on the state disability plan?

## Disability action plans

### Issues to consider: Disability action plans

- The *Equal Opportunity Act 2010* (Vic) includes a positive duty to end discrimination as far as possible.
- The *Gender Equality Act 2020* (Vic) includes positive duties to support the development and delivery of gender equality plans, and to make progress towards workplace inclusion.
- Disability action plans only apply to public sector organisations listed in the regulations.
- Disability action plans do not always align to broader diversity and inclusion plans and initiatives, particularly plans required by other laws such as the Gender Equality Act.
- It has been raised that disability action plans:
  - are not always delivered well and progress against goals is not always reported
  - could be consistent with and deliver on the state disability plan
  - could be available on a public register.
- It has been raised that the Disability Act could include clearer duties to develop, carry out and report on the progress of disability action plans.

### Background: Disability action plans

Disability action plans aim to drive public sector employment, reduce barriers, promote inclusion and change discriminatory attitudes and practices. Most public sector organisations, including all departments and local governments, must prepare a disability action plan and report on its implementation in their annual reports.

The Disability Act requires that public sector bodies prepare a disability action plan to:

- reduce barriers to people with disability accessing goods, services and facilities
- reduce barriers to people with disability getting and keeping jobs
- promote inclusion and participation of people with disability in the community
- achieve real changes in attitudes and practices that discriminate against people with disability.

The Disability Act does not say how often a disability action plan must be prepared. Some organisations have disability action plans that focus only on internal measures around creating more inclusive workplaces. Other organisations also focus on the goods and services they provide.

### Questions: Disability action plans

13. How could we strengthen the Act's provisions for disability action plans?
14. Who should be required to have a disability action plan?
15. What should a disability action plan focus on?
16. How could we improve accountability for achieving the goals of a disability action plan?
17. How could we improve reporting on disability action plans?

## Victorian Disability Advisory Council

### Issues to consider: Victorian Disability Advisory Council

- The role of the Victorian Disability Advisory Council in promoting the principle ‘nothing about us, without us’ and raising awareness.
- The benefits of creating disability advisory committees and how to involve those groups in co-design and independent tracking of disability plans.
- Whether departments and local governments should regularly report, assess and reflect on performance with independent oversight from people with disability.
- Whether the relationships between the UN Convention, the new national disability strategy, the state disability plan, the Victorian Disability Advisory Council and local level advisory committees and/or peer support groups should be set out in the Act.

### Background: Victorian Disability Advisory Council

The Victorian Disability Advisory Council’s functions are:

- to give advice to the minister, including advice about whole-of-government policies, strategic planning and initiatives for people with disability
- to suggest strategies for removing barriers to full inclusion and participation in the community
- communicate effectively with people with disability, the Victorian Government and the community
- raise community awareness about the rights of people with disability and of the role of government, the business sector and the community in promoting those rights
- consult and work with other disability advisory councils or bodies
- track the rollout of strategies for promoting inclusion and participation in the community of people with disability and for removing barriers to inclusion and participation.

### Questions: Victorian Disability Advisory Council

18. What should the Victorian Disability Advisory Council focus on?

19. How could we improve the role and functions of the Victorian Disability Advisory Council?

20. How could we improve the membership requirements for the Victorian Disability Advisory Council?

## 3.4 Safeguards and rights protection

Although the NDIS Commission oversees NDIS-funded services, Victoria has a critical safeguarding role with respect to:

- community visitors
- residential rights
- authorising restrictive practices
- compulsory treatment.

## Community visitors

### Issues to consider: Community visitors

- The Victorian Parliament receives the findings of community visitors each year. These reports have helped to protect vulnerable Victorians from abuse, neglect and exploitation.
- Since moving to the NDIS, community visitors do not always find out when a disability accommodation service that they can visit is set up.
- It has been raised that:
  - community visitors should not only visit disability accommodation services but should visit people who are vulnerable regardless of where they get their services
  - the powers and functions of community visitors may not be adequate to safeguard people living in disability accommodation post transition to the NDIS.

### Background: Community visitors

Community visitors can enter a residential service or NDIS disability accommodation to:

- talk to residents
- look at documents
- observe and report on the accommodation and support given to residents.

Their role includes:

- asking about the suitability and standard of the accommodation
- checking whether residents get the right information
- looking into any possible abuse or neglect
- asking about restrictive practices and compulsory treatment
- following up any complaint made to a community visitor.

When the Act was reviewed in 2019, changes were made so that community visitors can visit NDIS-funded long-term and short-term disability accommodation. They can also share information about any concerns with the NDIS Quality and Safeguards Commission. Since that time, the National Disability Insurance Agency has introduced funding for some new forms of accommodation that community visitors do not have the power to visit.

Under the NDIS, people get services in a range of settings, including their own private homes. This raises the issue of whether community visitors should visit people who are more vulnerable regardless of where they get their services.

### Questions: Community visitors

21. What should the role and powers of community visitors be within the changed NDIS service environment?
22. How could the Disability Act support community visitors to know about places they can visit?
23. What principles should apply to the role of community visitors when conducting visits?

## Residential rights

### Issues to consider: Residential rights

- Residential rights and protections include clear information to residents about:
  - what the service offers
  - charges and fees
  - how to make a complaint or see a community visitor
  - having access to supports when issues come up in their homes such as about repairs, disputes or problems with other residents.
- Specialist forensic disability accommodation are residential services under the Disability Act for people who need forensic disability supports and are under a civil or criminal order in the community. Stakeholders suggested that there may be a need for tailored provisions in the Disability Act to reflect the specialist nature of these services.
- Issues in moving to the NDIS have led to many group home residents not getting the residential rights that apply to Specialist Disability Accommodation under the *Residential Tenancies Act 1997*. Residential rights under the Disability Act have been maintained for these residents as an interim safeguarding measure.

### Background: Residential rights

Most disability accommodation services are now regulated under the NDIS Act. The Residential Tenancies Act sets out residential rights and protections for residents of NDIS-funded Specialist Disability Accommodation. The Disability Act gives residential rights and protections to people living in certain disability accommodation services that are exempt from the Residential Tenancies Act such as specialist forensic disability accommodation.

The Disability Act has rules about general residential rights and protections for people in short-term disability accommodation, such as transitional or respite services. These rules are also used to support the operation of specialist forensic disability accommodation. However, more specific rules may be needed in the Disability Act for regulating tightly supervised accommodation where residents may be subject to restrictions to protect the community.

The Disability Act also provides for residential rights and protections for people who live in longer-term disability accommodation, known as group homes. Most NDIS participants who live in group homes have their residential rights protected by new rules for Specialist Disability Accommodation in the Residential Tenancies Act. Some residents in group homes have not been able to access the new protections due to NDIS transition issues. Until all people in group homes can transition to the new protections, these residents continue to have residential rights under the Disability Act.

### Questions: Residential rights

24. How could we improve residential rights protections in group homes?
25. What should specific rules in the Disability Act for specialist forensic disability accommodation include?

26. Are there any other types of emerging or existing residential services that may require the safeguards under the Disability Act?
27. What options should we consider to address new types of long-term supported disability accommodation in which 'around the clock' support is provided and that do not meet the requirements for residential rights protections under the Residential Tenancies Act?

## Restrictive practices

### Issues to consider: Restrictive practices

- The Disability Act has separate rules for the authorisation of restrictive practices by registered NDIS providers and by non-NDIS disability service providers.
- The Act has penalties for disability services providers using restrictive practices in a way that is not authorised. The penalties do not apply for registered NDIS providers.
- Stakeholders said that the authorisation processes in the Disability Act for the use of restrictive practices may need to be strengthened. They also suggested reviewing the independent person's role in these processes.

### Background: Restrictive practices

Regulated restrictive practices include seclusion and chemical, mechanical, physical and environmental restraints. Restrictive practices restrict the human rights or freedom of movement of a person. They may only be used to prevent a person harming themselves or another person. Regulated restrictive practices must be the least restrictive option possible in the circumstances.

The Disability Act regulates how state funded disability service providers and registered NDIS providers can use restrictive practices. The Act includes approval, authorisation, prohibition and reporting requirements.

The Victorian Senior Practitioner can prohibit the use of restrictive practices, give directions to service providers, undertake audits and investigate issues. To date, neither the Public Advocate nor the Victorian Senior Practitioner have received any reports of concerns from an independent person.

### Questions: Restrictive practices

28. How could the authorisation model be more consistent?
29. How could we strengthen the authorisation model?
30. How could we improve the role of the independent person?
31. Should the Act include penalties for NDIS providers who do not follow the requirements?

## Compulsory treatment

### Issues to consider: Compulsory treatment

- Stakeholders suggested that compulsory treatment plans should have clearer lines of accountability and include more detailed transition processes. They also suggested that plans should be created in accessible formats and provided in a timely manner.

### Background: Compulsory treatment

The Disability Act provides safeguards for a small number of people with an intellectual disability who pose a significant risk of serious harm to others and are detained in disability residential services for compulsory treatment. The aims of compulsory treatment are to:

- reduce the risk of harm to others
- avoid entry or re-entry to the criminal justice system
- enable the person to improve their quality of life and increase their opportunities to participate in the community.

Compulsory treatment can apply to people who are either:

- admitted to a residential treatment facility under an order for treatment, or
- subject to a supervised treatment order (a civil order under the Act for a person living in a disability residential service in the community).

The Disability Act aims to give transparency and accountability to service providers through clear requirements and oversight of these practices.

### Residential treatment facilities

Under the Disability Act, the criteria for admission to a residential treatment facility include requirements that:

- the person has an intellectual disability
- the person is subject to a relevant order
- there is suitable treatment available for that person.

The Disability Act also requires that residential treatment facilities are operated by the Secretary through the department.

### Supervised treatment orders

The Victorian Civil and Administrative Tribunal makes supervised treatment orders for up to 12 months. These are civil orders that allow compulsory treatment for people with an intellectual disability who have shown a pattern of violent or dangerous behaviour. There must also be a significant risk of serious harm to another person that cannot be substantially reduced by any other means.



## Questions: Compulsory treatment

32. Should the criteria for admission to a residential treatment facility for compulsory treatment be reconsidered to cover people who do not meet the current criteria in the Disability Act?
33. Should supervised treatment orders continue to be an option for people who have previously displayed a pattern of violent or dangerous behaviour, and where there is a significant risk of serious harm to another person?

If yes, should we expand or strengthen the scope or requirements for supervised treatment orders? Should the Disability Act limit the time that a person can be subject to a supervised treatment order?

- (a) If yes, what should happen if a person continues to require treatment and presents a significant risk of serious harm to others?
- (b) If not, are there any other legislative safeguards that could be provided at certain points?

## 3.5 Forensic disability services and sentencing

### Issues to consider:

- It has been raised that:
  - Aboriginal people and people with cognitive impairments are over-represented in the criminal justice system.
  - We need effective and holistic service design and delivery for people with disability involved in the justice system, particularly those with cognitive impairments.
  - We need whole-of-government arrangements to enable effective justice system responses as well as intergovernmental arrangements to deliver disability supports to NDIS participants on civil or criminal orders.
  - People with cognitive impairments can struggle to meet the conditions of community orders where there is a lack of support and understanding of their disability-related needs.
- Justice plans under the Sentencing Act and plans of services under the *Children, Youth and Families Act 2005* must be developed in line with the principles and objectives of the Disability Act. These plans are designed to reduce the likelihood of the person committing further offences.
- Justice plans or plans of services may include NDIS-funded services. Victoria cannot guarantee the availability of services through the NDIS, and the scope of state-funded forensic disability supports under the Disability Act is now limited to supports that address criminogenic needs and that are not otherwise covered by the NDIS.

### Background: Forensic disability services and sentencing

Victoria has an ongoing role in funding, regulating and safeguarding forensic disability services and supports following rollout of the NDIS. Forensic disability services give specialised support and treatment to people with disability involved in the criminal justice system.

## Forensic disability services

Current access criteria for forensic disability services require that a person has a cognitive impairment such as intellectual disability as defined in the Disability Act.

Specific access criteria for forensic disability services are not in the Disability Act. The department decides access in line with access to disability services more broadly. Access to forensic disability services may be prioritised by:

- considering the person's needs
- the availability and suitability of services to meet those needs
- the overall impact on community safety.

## Justice plans and plans of services

The Sentencing Act provides the option of a justice plan to direct a person with an intellectual disability to take part in the services specified in the plan. This is a condition of the person's criminal order.

A justice plan is intended to reduce the likelihood of the person reoffending by involving them in available services adjusted to meet their disability-related needs. A justice plan is only available for a person with an 'intellectual disability' as defined in the Disability Act.

## Integrating NDIS and forensic disability services

The move to the NDIS has meant that Victoria has less ability to integrate arrangements for forensic disability supports with those for general disability supports, which are now delivered through NDIS providers.

In some cases, the NDIS may be responsible for funding reasonable and necessary supports that may impact on a participant's compliance with the conditions of a criminal or civil order but is unable to guarantee that these supports will be provided by NDIS service organisations.

## Questions: Forensic disability services and sentencing

34. 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?
35. Currently the Disability Act includes only general access criteria for disability services. What should be the specific criteria to access forensic disability services? Are the current criteria appropriate?

To receive this document in another format, phone 03 9456 3158, using the National Relay Service 13 36 77 if required, or [email the review team <disabilityactreview@dhhs.vic.gov.au>](mailto:disabilityactreview@dhhs.vic.gov.au).

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In this document, 'Aboriginal' refers to both Aboriginal and Torres Strait Islander people.

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