

About the *Disability Act 2006*

From 1 July 2007, the *Disability Act 2006* ('the Act') is the new legislation for people with a disability in Victoria. It replaces the *Intellectually Disabled Persons' Services Act 1986* and *Disability Services Act 1991*.

The Act provides for:

- a stronger whole-of-government, whole-of-community response to the rights and needs of people with a disability, and
- a framework for the provision of high quality services and supports for people with a disability.

The Act can be viewed on the Victorian Legislation and Parliamentary Documents website in the Victorian Statute Book section (www.legislation.vic.gov.au).

Understanding people's rights under the Act

The Act requires that people with a disability be given information that explains their rights.

For example, when a person starts to use a disability service, the disability service provider must give them information about the services to be provided and their rights under the Act.

The information given to a person under the Act must:

- use the language and type of communication they are most likely to understand
- where possible, be both explained to the person and given in writing.

If the person with a disability cannot understand the information, it can be given to another person of their choosing, who can assist them with understanding their rights.

Being included in the community

The Act has three key areas that focus on the inclusion and participation of people with a disability in the community:

Victorian Disability Advisory Council

The Victorian Disability Advisory Council provides advice to the Minister for Community Services on issues that affect people with a disability across all government services.

The Victorian Disability Advisory Council is a way for people with a disability to have a say in decision making on whole-of-government policy issues.

Most Council members must be people with a disability and they must come from a range of different backgrounds.

Disability Advisory Council

www.dac.vic.gov.au

1300 880 043

State Disability Plan

The *Victorian State Disability Plan 2002–2012* emphasises the importance of people with a disability being included and participating in their local communities.

The Act says that the current plan will continue until a new plan is required in January 2013.

Disability Action Plans

A Disability Action Plan is a plan to:

- reduce barriers for people with a disability as community members
- make it easier for people with a disability to use services available to all Victorians.

The Act says that all public services—government departments, statutory authorities and statutory corporations—must have a Disability Action Plan. Statutory authorities and statutory corporations will be identified before the Act commences.

Public services must report on their Disability Action Plan every year, to make sure the plans are put into practice.

Access to disability services

The Act states that people who have a physical, sensory or neurological impairment, an acquired brain injury, intellectual disability or developmental delay may access disability services.

The Act changes the way people access disability services, by allowing for a simpler and more consistent system for all people with a disability.

The Act says a person with a disability, or a person on their behalf, may request services from a disability service provider. This may be the Department of Human Services, or another disability service provider.

If a person is refused services because the disability service provider does not think the person has a disability, the person can request the Secretary of the Department of Human Services ('the Secretary') to decide whether they have a disability.

If the Secretary decides that the person does not have a disability, the person may ask the Victorian Civil and Administrative Tribunal (VCAT) to make a decision.

The Act does not change the Disability Support Register requirements for people who want to access some ongoing services, such as accommodation in community residential units.

Planning for people

The Act has guiding principles for planning, which include that planning should:

- be individualised
- be directed by the person with a disability
- consider and respect the person's family and other people who are important to the person with a disability
- be underpinned by the right of the person with a disability to have control over their own life.

The Act outlines a process for planning, which includes that:

- A person with a disability (or a person on their behalf) may ask a disability service provider to assist them with planning.
- People who receive ongoing disability services must have a support plan.
- A support plan must be reviewed at least once every three years, but can be reviewed earlier if requested.
- People with an intellectual disability who request a service must be offered assistance with planning.

Now the Act has commenced, any existing plans will continue until they are reviewed. When a person's plan is reviewed, the new planning processes will start.

Strengthening rights in residential services

A residential service is accommodation with staff support provided by a disability service provider.

The Act includes rights and duties for people living in residential services and obligations for disability service providers.

Disability service providers must provide a residential statement to a person with a disability when they start living at a residential service. The residential statement must include the type and cost of the service and other information such as a person's right to make a complaint.

The Act has duties for disability service providers, including making sure there is a balance between the rights of a person and the safety of all people living in the residential service.

The Act outlines duties for people living in the residential service, such as paying fees and keeping their room free from fire and safety hazards.

The Act protects the rights and privacy of people living in a residential service by providing guidance about when a disability service provider can enter a person's room.

Community residential units

The Act has extra requirements for community residential units in relation to fees and what needs to happen if people who live in the service need to move.

If a person is given notice of a fee increase, or notice to move permanently from the community residential unit, the person can apply to VCAT to review the decision.

Residential institutions

The Act outlines reasons for when a person with an intellectual disability may be admitted to a residential institution.

If a person is admitted to a residential institution, they can apply to VCAT for a review of this decision.

Managing money

The Act says a disability service provider cannot manage the money of a person with a disability using their service.

However, a residential service may manage a limited amount of money for a resident in specific circumstances.

Providing better complaint and review systems

The Act provides for better and clearer complaints and review systems.

Disability service providers

The Act says that disability service providers must:

- have a clear process for managing complaints about their services
- make sure that people who use their service know how to make a complaint
- report every year to the Disability Services Commissioner about the number of complaints they receive and how they managed these complaints.

Disability Services Commissioner

The Act creates Victoria's first Disability Services Commissioner, who will work with people with a disability and disability service providers to resolve complaints.

The Disability Services Commissioner will be independent of government and disability service providers and will report annually to Parliament.

Any person can make a complaint to the Disability Services Commissioner about disability services. The Disability Services Commissioner can also investigate complaints and has broad powers to look into complaints across a wide range of issues.

The Act makes it clear that it is an offence to threaten or intimidate a person who has made a complaint to the Disability Services Commissioner.

Disability Services Commissioner

www.odsc.vic.gov.au

1800 677 342

Victorian Civil and Administrative Tribunal (VCAT)

Under the Act a number of decisions can be made or reviewed by VCAT. This increases protections for people with a disability, who will be able to apply for review of certain decisions by a disability service provider.

VCAT is able to accept, modify or change the decision of the disability service provider, depending on the situation.

Victorian Civil and Administrative Tribunal

www.vcat.vic.gov.au

(03) 9628 9911

Providing high quality services

The Act has a number of mechanisms to improve the quality of disability services:

Registration

The Secretary may register a service provider as a disability service provider, if they can meet the requirements of the Act when providing a service to people with a disability.

The Secretary must keep a register of disability service providers, which can be viewed by the public.

Standards and performance measures

The Act will make sure services are of high quality and accountable to people with a disability, by ensuring standards and performance measures for disability services are set and monitored.

The Act states that the Minister must determine standards to be met by disability service providers. It is an offence if a disability service provider does not comply with these standards.

The Act states that the Secretary must specify performance measures in relation to the standards. The Secretary may monitor how disability service providers are meeting the performance measures.

If a disability service provider does not meet the performance measures, conditions of their funding or any other requirement of the Act, the Secretary has the power to take action.

Community visitors

Community visitors are volunteers who are able to inspect and make inquiries in relation to residential services. The Act outlines how community visitors are appointed and what they can do when visiting a residential service.

If a person living in a residential service asks to see a community visitor, the disability service provider must notify the community visitors within 72 hours.

Community visitors can, through the Community Visitors Board, provide reports to the Minister for Community Services. Community visitors can also refer a matter to a more appropriate person such as the Disability Services Commissioner.

Office of the Public Advocate

www.publicadvocate.vic.gov.au

1300 309 337

Protecting the rights of people subject to restrictive interventions and compulsory treatment

A small number of people with a disability are subject to restrictive interventions (such as restraint or seclusion) or to compulsory treatment, due to the harm they pose to themselves or others. The Act provides strong requirements to ensure that the rights of these people are protected.

Senior Practitioner

The appointment of a Senior Practitioner is a key part of the Act to ensure that people's rights are protected when these practices are used. The Senior Practitioner will also ensure that appropriate standards are met in relation to these practices.

The Senior Practitioner has extensive powers and can investigate and direct disability service providers to either stop or undertake a practice.

Senior Practitioner

www.dhs.vic.gov.au/disability
(03) 9096 8427

Restrictive interventions

The Act has specific requirements for the use of restraint and seclusion.

The Act says that restraint and seclusion cannot be used unless the following criteria are met:

- The disability service provider is approved to use restrictive interventions.
- The use of restraint or seclusion is included in a behaviour management plan.
- A person who is independent of the disability service provider has explained the use of restraint or seclusion to the person with a disability and that the person has the right to seek a review of the decision by VCAT.
- The behaviour management plan has been given to the Senior Practitioner.

The Senior Practitioner is responsible for monitoring the use of restraint and seclusion.

The Senior Practitioner may also monitor or set guidelines about the use of other restrictive interventions.

Compulsory treatment

The Act provides regulation of two types of compulsory treatment for people with an intellectual disability: criminal and civil.

Criminal

Residential treatment facilities provide compulsory treatment for people who have a criminal order which allows for treatment in these facilities.

The Statewide Forensic Service is identified in the Act as a residential treatment facility and the Act provides new protections for people who have treatment in this service.

These include that:

- the person must have a treatment plan
- the treatment plan must be reviewed by VCAT
- the Senior Practitioner must monitor the treatment of people in these facilities.

Civil

The Act creates a new civil order, a Supervised Treatment Order. This order applies where a person:

- has an intellectual disability
- is living in a residential service
- has restrictions on their freedom, because there is a great risk of them causing serious harm to another person.

The Act provides protection for the rights of these people, by ensuring that:

- treatment plans must be developed
- an application must be made to VCAT for a Supervised Treatment Order
- the Senior Practitioner must supervise the Supervised Treatment Order
- the person can apply to VCAT for review of the order at any time.

For more information

Disability legislation website: www.dhs.vic.gov.au/ds/disabilityact

Email: disability.legislation@dhs.vic.gov.au

Telephone: 1300 366 731 (during business hours)

TTY: (03) 9096 0133 (for people who are deaf or have a hearing, speech or communication impairment)