



Submission to the Review of the *Disability Act 2006* (Vic)

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Executive Summary

The Ethnic Communities' Council of Victoria (ECCV) welcomes the Victorian Government's commitment to reviewing the *Disability Act 2006* (Vic) (the Act) and appreciates the opportunity to have input. For more than four years ECCV has been funded by the Victorian Government to deliver disability and NDIS focused projects to empower culturally and linguistically diverse (CALD) people with disability, their families and communities to effectively navigate the Australian disability system. Recently, ECCV has been contracted through the Commonwealth's National Community Connector Program to provide additional engagement and advocacy support for CALD Victorians with disabilities, a group that remains under-represented among NDIS participants.

The delivery context of the *Disability Act 2006* (Vic) (the Act) has changed significantly since it was enacted. First introduced in 2013, the National Disability and Insurance Scheme (NDIS) has largely replaced the existing system of disability support provided by States and Territories. Much like other jurisdictions, Victoria retains a responsibility to provide disability support and funding for people who are not eligible for the NDIS or who may not be able to secure appropriate funding under the consumer-driven model.

ECCV's submission highlights that in this context, the Act must seek to improve disability inclusion and access to services so that people with disability do not fall through the gaps. In particular, we voice concern that people with disability on bridging and temporary visas – who do not meet the residency requirements of the NDIS – face increased risks to their emotional, financial, and social wellbeing. This represents an urgent human rights concern, as this group has limited access to other essential welfare services and may not have the means to negotiate the services that are available to them.

ECCV's submission directly responds to the questions posed by the consultation paper and offers additional recommendations to strengthen the Act. We place particular emphasis on the need to better incorporate the principles of United Nations Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments in the Act. We suggest that the Act must include measures that can improve access to disability support and advocacy services, including access to accredited interpreters and plain English information as a right, and better incorporate their needs through consultation mechanisms and in the governance of services and disability planning.

More broadly, legislative amendments to the Act must consider how, in practice, the factors that drive inequalities, such as discrimination, restrictive policies, limited eligibility and requirements to use English, constrain the potential to make a fully informed choice. Equality that only involves the same treatment as people without disability is not inclusive of people with disability, and, ultimately, leads to exclusion. Exclusion can have far-reaching negative impacts in all aspects of life – for people from migrant and refugee backgrounds, exclusion from service systems hinders their settlement, health, social and economic participation, and full inclusion in Australian society.

Summary of Recommendations

Responses to consultation paper

Recommendation 1. That subsections 3(c)-(f) in the *Disability Act* are amended to expressly reflect the role of the Victorian Government in providing disability services for people who are not eligible for the NDIS, or who cannot secure NDIS funding due to market failures.

Recommendation 2. That the objectives in the Act affirm that the State Government and the community (a) have a responsibility to facilitate the social and economic inclusion of people with disability; and (b) to give effect to a strong outcomes-focused approach to whole-of-government strategies that aim to make communities more accessible and inclusive for people with disability.

Recommendation 3. That the Act includes detailed objectives that reference the UN Convention on the Rights of Persons with Disabilities to strengthen the Act's commitment to human rights and addressing systemic barriers to inclusion.

Recommendation 4. That the Act includes objectives that reference the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the *Equal Opportunity Act 2010* (Vic) and the *Gender Equality Act 2020* (Vic) to strengthen the Act's commitment to intersectionality and equality.

Recommendation 5. That the principles of the Act expressly reflect principles supported by the CRPD, so that it begins with the assumption of the preference for supported decision-making, a culturally responsive approach, and a commitment to giving effect to the substance of the rights that people with disability are entitled.

Recommendation 6. That the Act includes principles that recognise the particular or distinctive needs of people with disability from migrant and refugee backgrounds, First Nations people with disability, women with disability, children with disability, and LGBTIQ+ people with disability.

Recommendation 7. That co-design principles are embedded in the Act, such as requiring direct consultations or partnerships with the population groups identified in the amended Act, and relevant representative and advocacy organisations.

Recommendation 8. That the Act includes a provision that requires public sector bodies under the Act to exercise their powers and perform their functions so as to give effect to the principles specified in the amended Act (in connection to their functions and operations).

Recommendation 9. That the Act requires the State Government to develop a strategic advocacy framework that is attached to the State Disability Plan, and that must be reviewed every 4 years to ensure that funding is long-term and sustainable.

Recommendation 10. That the Act includes the definitions of advocacy, individual advocacy, and system advocacy set out in the National Disability Advocacy Program (NDAP) and replicates the obligations regarding the provision of disability advocacy in the NDIS Quality and Safeguards Commission Practice Standards at a State level.

Recommendation 11. That the Act specifically supports the role of Disabled People's Organisations, and specifies that a Disabled Person's Organisation that represents people with disability from migrant and refugee backgrounds must be supported in Victoria under the Act.

Recommendation 12. That the definition of ‘disability’ in the Act reflects the definition in the CRPD, which moves away from diagnostic understandings of disability.

Recommendation 13. That the Act incorporates the terms ‘intellectual disability’ and ‘developmental disability’ into the broader definition of disability to better promote inclusion in service provision.

Recommendation 14. That the Act includes a definition of ‘mainstream supports and services’ for the purposes of the Act. This definition can be added to the amended objectives of the Act (see Recommendation 1).

Recommendation 15. That the Act includes a definition of ‘supports’ to reflect the exercise of supported decision-making principles in the CRPD, and clauses to ensure that all communications and processes relating to supported decision-making are culturally safe and accessible, including an assurance of access to interpreters.

Recommendation 16. Insert a provision that requires the Victorian Government ensures that people with disability participate in the preparation of the state disability plan, including with specific population groups as outlined in **Recommendation 6**, and to report on how people with disability were engaged in the development of the plan.

Recommendation 17. That the Act includes a provision that requires the Victorian Government to set out whole-of-government goals in the State Disability Plan that support the inclusion of people with disability in the community and that improve their access to mainstream services and supports.

Recommendation 18. That the Act includes a provision that requires the development of reporting and evaluation mechanisms to assess the effectiveness and intended outcomes of the State Disability Plan every four years, and to ensure it achieves its purposes as specified in the Act.

Recommendation 19. That the Act specifies that State Disability Plans must be guided by a policy focus on:

- Developing a whole of government strategy for the inclusion of people with a disability in all areas of public life
- Ensuring a culturally responsive approach across all areas of government action
- Addressing gaps in service provision for people who are not eligible for the NDIS or are unable to access NDIS funded support due to market failures
- Supporting people with disability involved in the justice system
- Developing disability awareness and education initiatives
- Ensuring that people with disability have access to safe, secure and stable housing
- Adopting a place-based approach to addressing disadvantage
- Preventing and addressing violence against people with disability
- Developing emergency preparedness and management plans that address the needs of people with disability, their families and carers

Recommendation 20. That the *Disability Act* includes provisions that:

- clarify the reporting obligations of public authorities
- require public authorities to review their Disability Action Plans every 4 years
- make Disability Action Plans accessible on a public register.

Recommendation 21. That the Disability Act includes a provision that imposes a general duty on public authorities to focus on promoting disability inclusion through their external functions and operations, such as service delivery, infrastructure and policy development.

Recommendation 22. That the Disability Act includes a provision requiring a public authority to specify how it proposes to have regard to relevant principles specified in the Act in its dealings with matters relating to people with disability (in connection with the exercise of its functions), and to outline how the Plan aligns with the goals of the State Disability Plan in place at the time.

Recommendation 23. Insert a provision that requires public authorities to consult with people with disability when preparing disability action plans, including with identified population groups as suggested in Recommendation 6, and to report on how people with disability were consulted in the drafting of the plan.

Recommendation 24. That the Disability Act includes a provision that requires public authorities to engage people with disability in the development of their disability action plans, and gives public authorities the option of consulting with individuals, relevant non-government organisations, and/or other appropriate entities, such as the Victorian Disability Advisory Council.

Recommendation 25. That section 38 of the Act is strengthened by imposing a duty on public sector bodies to undertake disability planning assessments, including in expenditure proposals and in policy development

Recommendation 26. That section 38 of the Act is strengthened to ensure that the disability action plans of local councils include a more robust monitoring of built environments for accessibility.

Recommendation 27. That local disability advisory committees are established under the Act that work with the Victorian Disability Advisory Council, and to involve those committees in specialist co-design and the independent monitoring of disability plans.

Recommendation 28. That public authorities are required under the Act to consider the recommendations of local disability advisory committees, and to report on how those recommendations were addressed.

Recommendation 29. That the Act includes the express requirement that at least one member of the Victorian Disability Council is a person with disability from a migrant or refugee background.

Recommendation 30. That the Disability Act includes provisions and relevant consequential amendments to other legislation that strengthen the standards, requirements, support and oversight of residential services, in accordance with recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Recommendation 31. That the Act specifies that language and communication supports are a right, including access to an interpreter, to improve the capacity of people from migrant and refugee backgrounds to explore housing options that meet their needs and preferences.

Recommendation 32. That the Act includes provisions for required standards of cultural responsiveness and inclusiveness of the Independent Person.

Further recommendations from ECCV

Recommendation 33. Include consequential amendments to the *Multicultural Act 2011* (Vic) and the *Guardianship and Administration Act 2019* (Vic) (for example, the capacity to engage in political citizenship, such as voting) and ensure that the amended Act is referenced in the Bill for the new *Mental Health and Wellbeing Act*.

Recommendation 34. That the Act specifies that the Victorian Government has a responsibility to ensure that people with disability can access accredited interpreters and language support as a right.

About ECCV

The Ethnic Communities' Council of Victoria (ECCV) is the peak advocacy body in Victoria for multicultural communities and people from culturally and linguistically diverse (CALD) backgrounds. ECCV has over 220 member organisations, including ethnic associations and multicultural service providers, and eight regional ethnic communities' councils across the state. Since 1974, we have been advocating for human rights, freedom, respect, equality and dignity for ethnic and multicultural communities, and for the building of a socially cohesive and inclusive Victorian community.

For more than four years we have been funded by the Victorian Government to deliver disability and NDIS focused projects to empower culturally and linguistically diverse (CALD) people with disabilities, their families and communities to effectively navigate the Australian disability system. Until June 2021, ECCV was contracted through the Commonwealth's National Community Connector Program to provide additional engagement and support for people with disability from CALD backgrounds, a group that remains under-represented among NDIS participants.

In May 2021 ECCV was contracted by the Office for Disability to undertake consultations to inform the forthcoming State Disability Plan. ECCV has also been commissioned to establish a state-wide Disability Network, and to undertake research about access to disability advocacy for people with disability from CALD backgrounds through the COVID-19 pandemic.

A note on terminology

The term 'people from migrant and refugee backgrounds' is used in this submission to refer to people and communities who have entered Australia through a variety of pathways, including through humanitarian, family, and skilled migration pathways. ECCV uses this term to refer to people with backgrounds and ancestry that is not part of the dominant Anglo-Celtic Australian population. This term is inclusive of people seeking asylum in Australia, people on temporary visas, undocumented migrants, and people born in Australia.

Policy Context

People with disability experience a range of barriers to inclusion, including stigma and discrimination, limited access to education and employment, and higher levels of poverty. For people from migrant and refugee backgrounds, these barriers are heightened by added layers of disadvantage, including structural racism and discrimination. People from migrant and refugee backgrounds are a highly diverse population, but common barriers are related to the lack of culturally responsive and language appropriate supports and information, distrust of institutions, difficulty accessing Australia's complex system of services, and stigmatising attitudes and misconceptions both within cultures and in the broader community.¹ These engagement barriers reflect a lack of cultural responsiveness in mainstream services more generally.

It is therefore not surprising that people from diverse cultures and religious groups are underrepresented in the National Disability Insurance Scheme (NDIS), making up only 9.5% of total participants, despite estimates suggesting that the number should be closer to 21%.² The NDIS was formalised in full in Victoria in July 2019, and the transition in service provision and funding was expected to be completed by the end of 2020. However, Victoria retains some residual functions in the provision of disability support for people who are not eligible for the NDIS, or who are unable to secure funding due to market failures. This includes people with disability on bridging and temporary visas, who may have specific needs stemming from their migration and resettlement experiences. This represents a substantial accessibility gap that the review of the *Disability Act 2006* (the Act) must not lose sight of.³

Currently, the Act does little to effectively incorporate the United Nations Convention on the Rights of Persons with Disabilities and other human rights instruments, such as the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The recognition and incorporation of these instruments will help strengthen the Act so that it can better address barriers to access and give substance to the realisation of full social and economic rights.

Among other things, Victoria maintains broader responsibilities to provide a wide range of services for all members of the community, including education, transport, housing, and health services. People with disability from culturally and linguistically diverse backgrounds use these services, and their lived experience, leadership and concerns must be embedded in the governance structures that inform disability planning requirements in the Act, such as the State Disability Plan. To effectively champion the inclusion of all people with disability in Victoria, a user-driven, intersectional and culturally responsive model must be reflected in all layers of the Act.

¹ Diversity and Disability Migrant Resource Centre North West, *Self-Advocacy and Diversity: A model for CALD inclusion* (Report, February 2019) <<https://eccv.org.au/wp-content/uploads/2021/02/SAnD-final-1.pdf>>

² National Disability Insurance Agency, *NDIS Quarterly Report to disability ministers* (Report, June 2021).

³ AMPARO, *The NDIS and Culturally and Linguistically Diverse Communities: Aiming High for Equitable Access in Queensland* (Report, October 2016).

Objectives and principles

1. *What objectives should the Disability Act have?*

2. *How could the Act support the UN Convention?*

Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol in 2008 and 2009 respectively, becoming one of the first jurisdictions in the world to do so. To be legally binding the provisions of the CRPD must first be incorporated into domestic law. The CRPD sets out the obligations of State parties (signatories to the UN Convention) to promote, fulfil and protect the rights of people with a disability.

The CRPD states that disability is a result of the interaction between people with impairments and physical, attitudinal and environmental barriers in the community that prevent access to social opportunities, services, housing, employment and information. The eight guiding principles that underlie the CRPD and its articles provide a basis for how and why inclusion can be prioritised in domestic law and policy:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
5. Equality of opportunity
6. Accessibility
7. Equality between men and women
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

Scholars have argued that the principles and Articles of the CRPD must be read holistically to better serve the needs of people with disability, and that “the focus for policymakers should be on the positive rights set out in the CRPD”.⁴ When read together, the principles and Articles of the CRPD support the view that the onus to break down barriers to inclusion rests with the State and the whole community. That is, State parties must take measures to create an enabling environment for people with disability to realise and enjoy full and substantive rights. This requires a commitment to substantive equality, which involves considering the realities of the disadvantages that people with disability experience, and the impact of these circumstances in terms of eliminating disadvantage in outcome or result.

Differences in how disability is viewed and experienced in diverse cultures and religious groups influences not only their lived experience of disability, but also help-seeking behaviours and preferred support options. Experiences of disability are complex and situational, and the views, needs and priorities of people with disability and their families and carers may not always align in

⁴ Bernadette McSherry & Kay Wilson, ‘The concept of capacity in Australian mental health law reform: Going in the wrong direction?’ (2015) 40 *International Journal of Law and Psychiatry* 60, 68.

encounters with available services. Formal rights or freedoms alone are not enough to achieve equal outcomes for differently situated individuals, or to enable them to reach their full potential.⁵ The Act must be amended to better address the multiple and intersecting factors stemming from lived experience, personal identifications and experiences of discrimination.

Strengthening inclusion and intersectionality

Currently, the objectives of the Act – particularly subsections 3(c)-(f) – seek to advance inclusion primarily in the context of disability service provision. Although the delivery context has changed, Victoria retains a residual function in the provision of services for people who are not eligible for the NDIS, including those who do not satisfy residency requirements. The wording of these objectives must be amended to ensure that people from migrant and refugee backgrounds who are on bridging and temporary visas are not denied access to essential disability services.

In April 2021, 1.7 million people held temporary visas in Australia. Although COVID-19 restrictions led to a significant drop in temporary visa holders (down from 2.17 million in April 2020), this category of entrants has seen the most significant rate of growth since 2000 compared to other visa types.⁶ The needs of this population may be more extensive than most, with many having limited access to settlement services.⁷ Delaying or not attending to those needs at all will create prolonged and more complex health issues and lead to significant emotional and financial hardship.

The Act must reflect an intersectional approach. That is, the Act must recognise the impact of discrimination, inequality and barriers on people from migrant and refugee backgrounds, including the combined and overlapping impacts of multiple forms of discrimination. Systemic inequality, stigma, barriers and discrimination based on race, gender, economic status, sexual orientation, transgender status, age, visa status, religion, ethnicity, intersex variation, contact with the legal system, participation in sex work, and a range of other factors can affect the lived experiences of people with disability, their access to supports, and inclusion more broadly.

Further, the objectives of the Act must be amended to affirm the Victorian Government's commitment to ensuring that the rights of people with disability are given proper consideration in all facets of government action, including policy development, program design, budgeting, performance measurement, and service delivery. Currently, subsection 3(b) stipulates the object of promoting 'a strategic whole of government approach in supporting the needs and aspirations of persons with a disability'.

This provision can be strengthened to articulate a strong outcomes-focused and joined-up approach to addressing the needs of people with disability. This will improve the intent and focus of the disability planning requirements in Part 4 of the Act. Compliance with the CRPD goes

⁵ Caroline Harnacke, 'Disability and Capability: Exploring the Usefulness of Martha Nussbaum's Capabilities Approach for the UN Disability Rights Convention' (2013) 41(4) *The Journal of Law, Medicine & Ethics* 768.

⁶ Michael Klapdor, Parliament of Australia, 'Temporary visa holders and social security: a quick guide' (Research Paper Series, 2019-20, 2020). <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/7340294/upload_binary/7340294.pdf>; Scanlon Institute, 'The Migration Dashboard', *Australian migration and population dashboard* (Web page, 23 June 2021) <<https://scanloninstitute.org.au/migrationdashboard>>

⁷ Philippa Duell-Piening, *Response to a Discussion Paper of the Victorian State Disability Plan 2017-2020* (Victorian Refugee Health Network, July 2016) 21. <http://refugeehealthnetwork.org.au/wp-content/uploads/Submission_2016_July26_State-disability-plan.pdf>

beyond law reform – it must also involve coordinated whole-of-government action that prioritises the resourcing of high quality services and ensures that they are adapted to individual needs.

Recommendation 1.

That subsections 3(c)-(f) in the *Disability Act* are amended to expressly reflect the role of the Victorian Government in providing disability services for people who are not eligible for the NDIS, or who cannot secure NDIS funding due to market failures.

Recommendation 2.

That the objectives in the Act affirm that the State Government and the community (a) have a responsibility to facilitate the social and economic inclusion of people with disability; and (b) to give effect to a strong outcomes-focused approach to whole-of-government strategies that aim to make communities more accessible and inclusive for people with disability.

To give effect to the intersecting challenges and factors affecting people with disability, the Act must also expressly reference human rights instruments that Australia is a party to, and that Victoria has incorporated into state law. Equivalent state legislation in New South Wales and South Australia invoke the CRPD to ensure, to the extent that is reasonably practicable, that the legislation supports the principles and purposes of the CRPD.⁸ ECCV recommends that the Act adopts the approach taken in the SA legislation, which has a separate and more detailed provision compared to the objects clause in the NSW legislation. In Victoria, the objects of the *Gender Equality Act 2020* (Vic) include a reference to the *Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter) and the relevant UN Convention.

Referencing the Victorian Charter, the Gender Equality Act, the *Equal Opportunity Act 2010* (Vic) and the CRPD will embed in the Act a human rights framework that allows for multiple and intersecting forms of disadvantage and discrimination to be considered in its administration, operation, and enforcement. These instruments detail the form and substance of the rights that people with disability are entitled to and promote an interpretation of the Act that is consistent with the internationally recognised way of viewing and addressing disability.

Recommendation 3.

That the Act includes detailed objectives that reference the UN Convention on the Rights of Persons with Disabilities to strengthen the Act's commitment to human rights and addressing systemic barriers to inclusion.

Recommendation 4.

That the Act includes objectives that reference the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the *Equal Opportunity Act 2010* (Vic) and the *Gender Equality Act 2020* (Vic) to strengthen the Act's commitment to intersectionality and equality.

⁸ *Disability Inclusion Act 2014* (NSW); *Disability Inclusion Act 2018* (SA).

3. How could we improve the principles in the Act?

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

The principles of the Act must be amended to reflect equivalent principles in the CRPD. Currently, these principles are conceptually aligned with the CRPD but can be strengthened by making direct reference to specific principles, such as supported decision-making. For example, the SA legislation contains the following principles (ss 9(1)(c)-(h)):

- (c) *people with disability have the right to participate in and contribute to social and economic life and should be supported to develop and enhance their ability to do so;*
- (d) *people with disability have the right to **realise their physical, social, sexual, reproductive, emotional and intellectual capacities;***
- (e) *people with disability have the right to make decisions that affect their lives including decisions involving risk to the full extent of their capacity to do so;*
- (f) *in cases where a person with disability wants or requires assistance in making a decision, **supported decision-making** is to be preferred over substituted decision-making;*
- (g) *people with disability have the right to access information in a way that is appropriate for their disability and cultural background, to enable them to make informed choices;*
- (h) *people with disability have the right to respect for their **cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs***

These principles focus on the *realisation* of substantive rights, capacities and capabilities through appropriate State Government intervention and support, as opposed to only a formal right, for example, of equal treatment. This will bring the Act in line with the CRPD which, as aforementioned, sees disability as arising from the interaction “with various barriers [that] may hinder their full and effective participate in society on an equal basis with others”.

Recommendation 5.

That the principles of the Act expressly reflect principles supported by the CRPD, so that it begins with the assumption of the preference for supported decision-making, a culturally responsive approach, and a commitment to giving effect to the substance of the rights that people with disability are entitled.

The principles of the Act must also directly recognise the needs of groups who experience disadvantage and specific barriers in accessing services due to, for example, the expectation of English language proficiency, or the use of Western-centric models of care that do not respond to the diversity of understandings of disability in the community. Currently, ss 2(f) of the Act recognises cultural needs in the context of access of information, while ECCV recommends that cultural needs and barriers to access are addressed more broadly.

Choice is a vital aspect of the CRPD. To make a fully informed choices, people from migrant and refugee backgrounds need specific support. Key principles to reflect the needs of people from migrant and refugee backgrounds in the Act include the need for cultural and gender responsiveness, an intersectional approach, access to language services as a right, cultural safety, and sufficient support to help them navigate services and understand what the system could provide to benefit their individual needs.

The provisions in the equivalent state legislation in NSW and SA also require that supports, services and other matters that arise in the administration and enforcement of the Act must be informed by consultations or partnerships with relevant population groups. Embedding co-design requirements in the Act will substantially improve the quality of service provision for people from migrant and refugee backgrounds and help develop more culturally responsive and inclusive user-driven models of support. Further, a provision must be inserted to require authorities covered by the operation of the Act to exercise their powers and perform their functions so as to give effect to the principles specified in the Act. This will promote greater consistency and strengthen accountability across the Act for the purposes of promoting inclusion in disability planning requirements.

Recommendation 6.

That the Act includes principles that recognise the particular or distinctive needs of people with disability from migrant and refugee backgrounds, First Nations people with disability, women with disability, children with disability, and LGBTIQ+ people with disability.

Recommendation 7.

That co-design principles are embedded in the Act, such as requiring direct consultations or partnerships with the population groups identified in the amended Act, and relevant representative and advocacy organisations.

Recommendation 8.

That the Act includes a provision that requires public sector bodies under the Act to exercise their powers and perform their functions so as to give effect to the principles specified in the amended Act (in connection to their functions and operations).

Disability advocacy

5. How could the Act support disability advocacy?

Advocacy is vital support for people with disability, as it ensures the continued promotion, protection and security of their rights, and enables their genuine participation in the community and in the decisions that impact their lives.⁹ However, people from migrant and refugee backgrounds may not always have the skills, knowledge, confidence or trust needed to articulate their will and preferences. They may struggle to navigate Australia's complex system of services due to lower levels of health literacy and English-language proficiency, and lack of informal support networks.¹⁰

Currently, s 5(3) in the principles section of the Act states that disability services and regulated disability services should:

be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support where necessary to enable adequate decision making about the services they receive.

It is important that this provision is strengthened in the Act to reflect the Victorian Government's responsibility to ensure that advocacy is available to people with disability in Victoria. It can be strengthened by aligning its wording more closely with the principles found in ss 4(13)(a)-(c) of the *National Disability Insurance Scheme Act 2013* (Cth), which recognise the importance of disability advocacy in protecting and promoting the rights of people with disability. To promote a nationally consistent approach, the Act should also adopt the definitions of advocacy, individual advocacy, and system advocacy set out in the National Disability Advocacy Program (NDAP). Further, ECCV recommends that obligations regarding the provision of disability advocacy found in the NDIS Quality and Safeguards Commission Practice Standards are replicated at the State level.

What is missing from the Act is support for advocacy at a systems level. In recent years, there has been a significant effort to improve the reach and capacity of disability advocacy sector in Victoria and Australia more broadly. Advocacy is a key priority of the State Disability Plan. The Government funds the Victorian Disability Advocacy Program (VDAP), which provides \$2.9 million in funding per year to 24 disability advocacy organisations, including funding to the Self-Advocacy Resource Unit and the Disability Advocacy Resource Unit.¹¹ VDAP is supported by the *Victorian Disability Advocacy Futures Plan 2018-2020*, which emphasised the importance of raising awareness of systems advocacy and improving the coordination and resourcing of Victoria's disability advocacy sector.¹² Commonwealth funding to the sector is also provided via the NDAP and the NDIS Information Linkages and Capacity Building (ILC) program.

⁹ Department of Social Services, *National Disability Advocacy Framework* (Report, 2014) <https://www.dss.gov.au/sites/default/files/documents/11_2014/attachment_a.2_-_national_disability_advocacy_framework.pdf>

¹⁰ This emerged from the desktop research conducted by Nimo Hersi, Disability Advocate Coordinator at ECCV.

¹¹ Victorian State Government, Department of Health and Human Services, *Victorian Disability Advocacy Futures Plan 2018–2020* (Report, October 2018) 7.

<https://www.statedisabilityplan.vic.gov.au/application/files/6015/4388/4967/Victorian_disability_advocacy_futures_plan_2018_2020.pdf>

¹² Ibid.

However, an ongoing issue is the lack of secure and long-term funding needed to build the capacity of the disability advocacy sector. The Act must be amended to reflect the Victorian Government's ongoing commitment to disability advocacy across Victoria. This can be expressed in the form of a provision attached to the State Disability Plan that requires the development of a complementary strategic advocacy framework, and a provision that enables the Minister for Disability to appropriate funds to resource disability advocacy.

As suggested in **Recommendation 6**, people with disability from migrant and refugee backgrounds, First Nations peoples, LGBTIQ+ people, and women and children with disability, must be identified in the Act as groups with distinct needs and facing additional barriers. The strategic advocacy framework must commit to the continued and expanded funding of individual and systemic advocacy in Victoria, particularly for population groups identified as experiencing access barriers.

There are currently many gaps and limitations in the availability of disability advocacy for people from migrant and refugee backgrounds in Victoria. In particular, there is no state-wide Disabled People's Organisation (DPO)¹³ that represents people with disability from migrant and refugee backgrounds and advocates for their human rights. A representative voice is essential to ensure meaningful inclusion and responsiveness. DPOs are an essential part of the disability advocacy landscape and must be supported to represent people with disability from migrant and refugee backgrounds at systemic, community and individual levels.

ECCV urges the Victorian Government to take a targeted approach to disability advocacy by funding DPOs and advocacy services with multicultural expertise. DPOs by definition are made up of and led by people with disability and must be supported in that capacity. Specialist advocacy services must include multilingual staff, specific and targeted communication strategies, partnerships with multicultural and ethno-specific organisations and cultural and gender expertise among their governance and leadership. More broadly, different cultures have different attitudes and beliefs about supporting people with disability, and strengthening the advocacy capacity of both individuals and organisations requires an approach that values the diverse needs of families, carers and communities.

Recommendation 9.

That the Act requires the State Government to develop a strategic advocacy framework that is attached to the State Disability Plan, and that must be reviewed every 4 years to ensure that funding is long-term and sustainable.

Recommendation 10.

That the Act includes the definitions of advocacy, individual advocacy, and system advocacy set out in the National Disability Advocacy Program (NDAP) and replicates the obligations regarding the provision of disability advocacy in the NDIS Quality and Safeguards Commission Practice Standards at a State level.

¹³ For an outline of the history and roles of DPOs, see People with Disability Australia:

<https://pwd.org.au/resources/disability-info/student-section/disabled-people-s-organisations-dpos/>

Recommendation 11.

That the Act specifically supports the role of Disabled People's Organisations, and specifies that a Disabled Person's Organisation that represents people with disability from migrant and refugee backgrounds must be supported in Victoria under the Act.

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?*

Currently, the Act defines ‘disability’ for the purposes of determining eligibility. It does so by focusing on the effects of the impairment for the person with disability. This definition is not inclusive of psychosocial, psychiatric or cognitive disabilities.

The CRPD recognises that ‘disability’ is an evolving concept. Article 1 of the UN Convention holds that **disability** arises 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 highlights the need to address inequality and discrimination by reducing barriers to access for people with disability. The CRPD represents a break away from previous biomedical and welfare approaches to disability, which saw it as a deficit to be treated or fixed. It recognises that disability policy is a matter of human rights and rejects that view that we only provide care to people with disability out of a well-meaning sense of charity or paternalism.

To better reflect the principles of the CRPD, ECCV recommends that the definitions of ‘intellectual disability’ and ‘developmental disability’ be incorporated into the broader definition of disability found in the CRPD. This approach is taken in the NSW and SA legislation. For example, the SA legislation defines ‘disability’ as follows:

disability, in relation to a person, includes long-term physical, psycho-social, intellectual, cognitive, neurological or sensory impairment, or a combination of any of these impairments, which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others

Moving towards a functional definition of ‘disability’ and away from one that emphasises diagnostic criteria, will provide a stronger basis for disability inclusion through the Act. A focus on diagnostic or medical definitions risks further marginalising people with disability.

It is also important to note that some people with disability may not identify with diagnostic labels. Others may use other labels or forms of self-definition to explain the practical realities and difficulties of living with an intellectual or developmental disability – such as, for example, difficulty learning or remembering things.¹⁴ Disability service providers must recognise that people have different experiences and cultural understandings of disability, and that these are not

¹⁴ Irene Francisco and Glenys Carlson, ‘Occupational therapy and people with intellectual disability from culturally diverse backgrounds’ (2002) 49(4) *Australian Occupational Therapy Journal* 200.

necessarily reflected in diagnostic criteria.¹⁵ The Act must reflect these broader definitions and understandings so it can be applied across a range of community circumstances.

Recommendation 12.

That the definition of ‘disability’ in the Act reflects the definition in the CRPD, which moves away from diagnostic understandings of disability.

Recommendation 13.

That the Act incorporates the terms ‘intellectual disability’ and ‘developmental disability’ into the broader definition of disability to better promote inclusion in service provision.

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

Victoria maintains a function to provide disability support services for people are not eligible for the NDIS, and for people who are eligible for the NDIS but have complex needs that are not funded due to market failures (see **Recommendation 1**).¹⁶ A definition of ‘mainstream supports and services’ should be inserted in the Act to clarify the supports and services that the Victorian Government funds and provides, which differ from NDIS-funded supports and services.

Further, a definition of ‘supports’ similar to that in the NSW legislation will strengthen the Act’s commitment to the supported decision-making principles expressed in the CRPD. The definition in the NSW legislation is as follows:

***supports** means assistance provided to a person with disability to do one or more of the following:*

(a) to help the person undertake his or her day-to day activities,

(b) to increase the person’s independence,

(c) to facilitate the person’s social and economic inclusion in the community.

This definition supports the move away from ‘best interests’ decision-making made by a substitute decision-maker, which assumes a deficit in the person’s ability to make and participate in decisions affecting them. As suggested in **Recommendation 5**, the Act must start with the clear assumption that people with disability have the capacity, or capability, to make their own decisions. This aspect should extend from supported decision-making to whole of life activities. To better reflect this, the definition in the Act should be guided by the Australian Law Reform Commission’s National Decision-Making Principles 2014, which call for the provision of support where necessary to ensure that people with disability are able to exercise their will and preferences in decisions that affect their lives.¹⁷ This includes drafting effective legislative safeguards to prevent abuse and undue influence in relation to interventions for people who may require support with decision-making.

¹⁵ Christine Bigby, Mary Whiteside and Jacinta Douglas, ‘Providing support for decision making to adults with intellectual disability: Perspectives of family members and workers in disability support services’ (2019) 44(4) *Journal of Intellectual and Developmental Disability* 396.

¹⁶ Victorian Legal Aid, *Ten stories of NDIS ‘Thin Markets’: Reforming the NDIS to meet people’s needs* (Submission to the Department of Social Services and the National Disability Insurance Agency’s NDIS Thin Markets Project, August 2019) 3.

¹⁷ Australian Law Reform Commission, ‘National Decision-Making Principles’ (Web page, 18 September 2014).

<<https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/3-national-decision-making-principles-2/national-decision-making-principles-2/>>

Supported decision-making is endorsed by disability advocacy groups as best practice. However, in some contexts it requires a high level of health literacy and culturally safe communication between people with disability, their families and carers, and service providers. Amongst migrant and refugee communities there are varied levels of health literacy and English proficiency. The frames of reference through which disability is experienced and understood by people from migrant and refugee backgrounds may be distinct from the Western legal or biomedical models that often inform standard practices in Australia.

It is therefore critical that the Act contains provisions for all communications and processes relating to supported decision-making to be culturally safe and accessible to the diverse needs of our community. Supported decision making must utilise best practice models that take a rights-based and intersectional approach to empowering people with disability while reducing the risk of coercion or forced consent. The long-term sustainability of independent disability advocacy is key to facilitating the safe and inclusive exercise of supported decision-making (see **Recommendation 9**).

Recommendation 14.

That the Act includes a definition of ‘mainstream supports and services’ for the purposes of the Act. This definition can be added to the amended objectives of the Act (see Recommendation 1).

Recommendation 15.

That the Act includes a definition of ‘supports’ to reflect the exercise of supported decision-making principles in the CRPD, and clauses to ensure that all communications and processes relating to supported decision-making are culturally safe and accessible, including an assurance of access to interpreters.

Inclusion mechanisms

State Disability Plan

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

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?

To ensure that the new Act is effective at promoting the human rights of people with disability, it must include robust accountability, investment and reporting mechanisms. ECCV recommends the development of a framework similar to the Gender Equality Act, which is designed to embed cultural and systems change.

This should include an obligation on the Victorian Government to prepare a State Disability Plan that complies with the principles and objectives of the Act, and that promotes education and capacity-building initiatives. The State Disability Plan must be subject to an ongoing and consistent implementation framework that includes measurements, targets and timelines, and public reporting guidelines, and a clear commitment to achieve intended outcomes over four years. A focus on protecting and promoting the rights, dignity, and autonomy of people with disability must remain at the centre of the amended Act and its implementation framework.

People with disability must be engaged in the accountability mechanisms for the State Disability Plan, for instance through local, place-based mechanisms, as well as at a state-wide level. These mechanisms must be required to be inclusive for people with disability from CALD backgrounds.

Recommendation 16.

Insert a provision that requires the Victorian Government ensures that people with disability participate in the preparation of the state disability plan, including with specific population groups as outlined in **Recommendation 6**, and to report on how people with disability were engaged in the development of the plan.

Recommendation 17.

That the Act includes a provision that requires the Victorian Government to set out whole-of-government goals in the State Disability Plan that support the inclusion of people with disability in the community and that improve their access to mainstream services and supports.

Recommendation 18.

That the Act includes a provision that requires the development of reporting and evaluation mechanisms to assess the effectiveness and intended outcomes of the State Disability Plan every four years, and to ensure it achieves its purposes as specified in the Act.

10. What should the state disability plan focus on?

The State Disability Plan must outline a whole-of-government strategy for the inclusion of people with disability in all areas of public life. For people with disability from migrant and refugee backgrounds, this necessarily involves a culturally responsive approach across all areas of government action to ensure inclusion and access.

The Plan must also address gaps in service provision for people who are not eligible for the NDIS or are unable to access NDIS funded support due to market failures. In order to do so, the State Disability Plan must develop a vision for the interface between the NDIS and mainstream supports and services. The Victorian Government must outline its responsibility in coordinating, funding and providing disability services for people not covered by the NDIS. ECCV supports Victoria Legal Aid's recommendation to implement a service safety net in urgent cases where:

market failure leads to people with complex needs engaging with the criminal justice system ... [the plan must ensure] appropriate therapeutic disability supports are available while in custody, and [reduce] delays in providing pathways out of custody for people with disability.¹⁸

The State Disability Plan must embed a place-based approach that can engage and work in partnership with local communities.¹⁹ Socioeconomic disadvantage is concentrated in particular geographic locations, and people from migrant and refugee backgrounds are more likely to reside in local government areas that have higher levels of socio-economic disadvantage compared to the wider community. According to the Dropping off the Edge report 2015, those living in 3% of the most disadvantaged communities in Victoria are 2.4 times more likely to be on a Disability Support Pension.²⁰

Targeted education and disability awareness will also help address the marginalisation and isolation of people with disability from migrant and refugee backgrounds. This may in part be based on stigma, culturally specific beliefs about the roles of people with disability and their families, a lack of understanding within their communities. The State Disability Plan must work with communities to promote greater disability awareness, inclusion and access.

Participants in community consultations have reported that people from migrant and refugee background face added challenges due to the impact of the COVID-19 pandemic. People from migrant and refugee backgrounds living in high-income countries such as Australia experience higher COVID-19 infection rates and poorer health outcomes, due to exclusion, poorer access to health services, and language barriers.²¹ The ongoing challenges of the COVID-19 pandemic point to the need to strengthen targeted approaches to emergency management and preparedness.²²

Recommendation 19.

That the Act specifies that State Disability Plans must be guided by a policy focus on:

¹⁸ Victoria Legal Aid, *Inclusion and accessibility for all Victorians* (Submission on the Victorian Government's Consultation paper for state disability plan 2021-2024, April 2020) 11.

¹⁹ Victorian State Government, *A framework for place-based approaches: The start of a conversation about working differently for better outcomes* (Policy Framework, February 2020) <<https://content.vic.gov.au/sites/default/files/2020-03/Working-%20together-in%20place-Policy%20Framework.pdf>>.

²⁰ Tony Vinson et al., 'Dropping off the Edge 2015: Persistent Communal Disadvantage in Australia' (Research Report, Jesuit Social Services and Catholic Social Services Australia, 2015) 59. <http://k46cs13u1432b9asz49wnhcx-wpengine.netdna-ssl.com/wp-content/uploads/0001_dote_2015.pdf>.

²¹ Sonu Bhaskar et al., 'Call for action to address equity and justice divide during COVID-19' (2020) 3(11) *Frontiers in Psychiatry* 1411; Elissa M Abrams and Stanley J Szeffler, 'COVID-19 and the impact of social determinants of health' (2020) 8(7) *The Lancet* 659.

²² Antoine Chandonnet, 'Emergency Resilience in Culturally and Linguistically Diverse Communities Challenges and Opportunities' (Report, Australian Red Cross, January 2021) <<https://www.redcross.org.au/getmedia/91d7f63f-bafd-4f5e-8165-de8a2196c25f/ARC-CALD-resilience.pdf.aspx>>

- Developing a whole of government strategy for the inclusion of people with a disability in all areas of public life
- Ensuring a culturally responsive approach across all areas of government action
- Addressing gaps in service provision for people who are not eligible for the NDIS or are unable to access NDIS funded support due to market failures
- Supporting people with disability involved in the justice system
- Developing disability awareness and education initiatives
- Ensuring that people with disability have access to safe, secure and stable housing
- Adopting a place-based approach to addressing disadvantage
- Preventing and addressing violence against people with disability
- Developing emergency preparedness and management plans that address the needs of people with disability, their families and carers

Disability action plans

13. How could we strengthen the Act's provisions for disability action plans?

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?

As suggested in **Recommendation 8**, a provision should be included in the Act to require authorities covered by the operation of the Act to exercise their powers and perform their functions so as to give effect to the principles specified in the Act. This provision extends to the development of disability action plans. Recommendation 6 also highlighted the importance of embedding co-design principles in the Act to incorporate the local leadership of people with disability, as this would begin to address actions they determine as important to them.

The Act does not currently clarify which functions a defined public authority must focus on improving for the purposes of disability inclusion. This limits the potential strength and impact of disability action plans. A provision must be inserted to require public authorities to fulfil a general duty to focus on disability inclusion through external functions, as well as internal workforces. For example, councils provide a range of community services that can be improved by considering the ways in which policy development and service delivery could better promote disability inclusion. This would ensure that disability action plans have the full reach into the community and across the public sector that will promote genuine inclusion and reduce barriers.

Similar positive duties exist under the Equal Opportunity Act and the Gender Equality Act for defined bodies to have policies and procedures in place that, for example, remove barriers to employment and reduce discrimination. Public authorities must also publicly report targets and timelines in annual reporting and when reviewing their Disability Action Plans.

Recommendation 20.

That the *Disability Act* includes provisions that:

- clarify the reporting obligations of public authorities
- require public authorities to review their Disability Action Plans every 4 years
- make Disability Action Plans accessible on a public register.

Recommendation 21.

That the Disability Act includes a provision that imposes a general duty on public authorities to focus on promoting disability inclusion through their external functions and operations, such as service delivery, infrastructure and policy development.

Recommendation 22.

That the Disability Act includes a provision requiring a public authority to specify how it proposes to have regard to relevant principles specified in the Act in its dealings with matters relating to people with disability (in connection with the exercise of its functions), and to outline how the Plan aligns with the goals of the State Disability Plan in place at the time.

Recommendation 23.

That the Disability Act includes a provision that requires public authorities to consult with people with disability when preparing disability action plans, including with identified population groups as suggested in **Recommendation 6**, and to report on how people with disability were consulted in the drafting of the plan.

Recommendation 24.

That the Disability Act includes a provision that requires public authorities to engage people with disability in the development of their disability action plans, and gives public authorities the option of consulting with individuals, relevant non-government organisations, and/or other appropriate entities, such as the Victorian Disability Advisory Council.

15. What should a disability action plan focus on?

Disability action plans should focus on bringing about systemic change in relation to disability inclusion. Currently, the Act stipulates that disability action plans must focus on reducing barriers to service and employment barriers, promoting inclusion in the community, and achieving tangible changes in discriminatory attitudes that limit opportunities for people with disability. These provisions can be strengthened by including strategies and measures that public authorities can set out in their disability action plans in order to give effect to the Objectives and principles in the Act, such as:

- Providing equitable access to information, public spaces, transport, and services
- Providing access to sites and the built environment, including buildings, events and facilities
- Creating opportunities for people with disability to access the full range of services and activities available in the community

These strategies, as outlined above, must be informed by genuine engagement with people with disability, their families and carers, and must seek to incorporate their leadership in governance processes where possible.

ECCV particularly recommends that all public authorities are required to ensure accessible communications that will reach people with disability from CALD backgrounds, including provision of written information in accessible formats, and that people with disability from CALD backgrounds have access to interpreters when required.

Recommendation 25.

That section 38 of the Act is strengthened by imposing a duty on public sector bodies to undertake disability planning assessments, including in expenditure proposals and in policy development.

Recommendation 26.

That section 38 of the Act is strengthened to ensure that the disability action plans of local councils include a more robust monitoring of built environments for accessibility.

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?

Currently, there is no requirement under the Act for public authorities such as departments and local government to regularly report, assess and reflect on the performance of their Disability Action Plans to the Disability Advisory Council. ECCV recommends that the role of the Disability Advisory Council is be expanded to focus explicitly on:

- Monitoring the implementation of government policy
- Promoting awareness of Disability Action Plans
- Consulting with people with disability and with relevant public authorities
- Conducting research about matters relating to people with disability

Expanding the power of the Disability Advisory Council will improve its visibility and status across Victoria to lead and influence disability policy. These amendments will promote a more consistent means of measuring performance in the long-term and will improve awareness of the importance of disability inclusion and advocacy more broadly.

Recommendation 27.

That local disability advisory committees are established under the Act that work with the Victorian Disability Advisory Council, and to involve those committees in specialist co-design and the independent monitoring of disability plans.

Recommendation 28.

That public authorities are required under the Act to consider the recommendations of local disability advisory committees, and to report on how those recommendations were addressed.

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

The membership requirements for the Disability Council under the Act seek to represent people with disability from a broad range of backgrounds and lived experiences, including cultural and Indigenous backgrounds. However, there is currently no requirement that the Disability Advisory Council must reflect the diversity of the community.

To fully represent the interests, perspectives, challenges and opportunities for people with disability across Victoria, the Disability Advisory Council must include a membership with lived, community and professional experience that represents a diverse range of population groups.

ECCV recommends that there must be, for example, at least one person with disability from a migrant and/or refugee background with relevant expertise on the Disability Advisory Council. This requirement must be expressly stated in the Act to ensure that members of the Disability Advisory Council represent the full diversity of the wider community.

Recommendation 29.

That the Act includes the express requirement that at least one member of the Victorian Disability Council is a person with disability from a migrant or refugee background.

Safeguards and rights protection

Residential rights

24. How could we improve residential rights protections in group homes?

People with Disability Australia outlines:

For decades, people with disability have been shut away in institutions, group homes and other kinds of housing that non-disabled people never have to consider. We want the right to live in the community, just like everyone else.²³

The CRPD makes it clear that people with disability should:

[H]ave the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.

This statement must serve as the public policy objective for housing for people with disability. Despite the introduction of the NDIS, group homes continue to be the dominant housing option for people with disability in Australia. During stakeholder consultations ECCV heard stories of people with disability, frequently those who have fallen through a gap between NDIS and state accommodation providers, who reside in substandard accommodation. These were mentioned as privately run hostels, boarding houses, shared accommodation arrangements, where residents were without the supports of persons that could monitor their living conditions or advocate for improvements.

This is supported by witness statements heard at the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.²⁴ Research has also shown that for people with disability, living in group homes and other residential service settings leads to poorer outcomes and increases the risk of experiencing social isolation, abuse, and neglect.²⁵ Much like the rest of the Australian population, people with disability have a range of different housing needs and preferences, and must be supported to decide where, how and with whom they live.

Recommendation 30.

That the Disability Act includes provisions and relevant consequential amendments to other legislation that strengthen the standards, requirements, support and oversight of residential services, in accordance with recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

²³ People with a Disability Australia, 'Housing' (Web Page) <<https://pwd.org.au/drc-hub/issues/housing/>>

²⁴ Evidence to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 28 November 2019 (Dr George Taleporos and Dr Di Winkler).

²⁵ Tal Aratem-Bergan, Christine Bigby and Gail Ritchie, *Literature Review of Best Practice Supports in Disability Services for the Prevention of Abuse of People with Disability*, (Report for the Office of the Disability Services Commissioner, September 2017) <<http://arrow.latrobe.edu.au:8080/vital/access/manager/Repository/latrobe:42524>>

Recommendation 31.

That the Act specifies that language and communication supports are a right, including access to an interpreter, to improve the capacity of people from migrant and refugee backgrounds to explore housing options that meet their needs and preferences.

Restrictive practices

30. How could we improve the role of the independent person?

Under the CRPD, restrictive practices, whether social, chemical, mechanical or physical, are a breach of human rights. Nevertheless, restrictive practices are often used to restrict the rights or freedoms of people with disability. The reasons cited for this include the safety of the person, another person, or staff. The use of restrictive practices is regulated by disability service providers, both state and NDIS, and must be included in a behaviour support plan for the person. These are reported to the Victorian Senior Practitioner and the NDIS Quality and Safeguards Commission respectively. Feedback from the disability sector suggest that restrictive practices are more commonly used than are reported.

The role of the Independent Person, someone the person with a disability knows, is vital for people from migrant and refugee backgrounds. A family member, friend or someone from their community who can explain in language they understand why restrictive practices have been included in their behaviour support plan. Importantly this includes an explanation that the person has the right to seek a review if they are unhappy with what is being proposed. Issues of concern can also be raised with the Public Advocate or the Victorian Senior Practitioner.

People with disability from migrant and refugee backgrounds who are subjected to restrictive practices be severely disadvantaged in their understanding about the restrictions of liberty that are imposed on them. The Act must ensure that people with disability from CALD backgrounds have equitable access, by increasing the cultural responsiveness of the Independent Person, including requirements for accessible communication in required community languages.

Recommendation 32.

That the Act includes provisions for required standards of cultural responsiveness and inclusiveness of the Independent Person.

Conclusion

ECCV commends the Victorian Government for reviewing the *Disability Act 2006* (Vic). In this submission, ECCV highlighted that people from migrant and refugee backgrounds who live with disability experience a range of intersecting barriers to inclusion, including racism and discrimination. Other barriers relate to the lack of culturally responsive and language appropriate supports and information, difficulty navigating the system, a limited capacity to self-advocate, and restricted access to welfare and disability services, particularly for people on temporary visas.

The United Nations Convention on the Rights of Person with Disabilities (CRPD) provides best practice guidance for the inclusion of people with disability. It shifts the focus to the needs of the individual and to guaranteeing a standard of wellbeing and support that enables them to exercise their own will and preferences.

ECCV's submission highlighted the ways in which the CRPD can be better incorporated in the Act. These include measures that can improve access to disability support and advocacy services, including access to accredited interpreters and plain English language information, and that can better reflect their needs through consultation and in the governance of services and disability planning.