Disability Act 2006
A guide for disability service providers
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Introduction

Section 1 of the *Disability Act 2006* (the Act) outlines the purpose of the Act as to enact new legislation for people with a disability that reaffirms and strengthens rights and responsibilities and recognises that this requires support across the government and community.

Sections 1 and 2 of the Act, which outline the purpose and commencement of the Act, have already come into effect. The rest of the Act will come into operation on 1 July 2007 unless proclaimed earlier.

The purpose of this document is to provide a guide to the Act, outline the major areas and identify key points for disability service providers. The guide will enable disability service providers to understand the new legislative provisions.

Section 3 of the Act defines disability service providers as the Secretary or a person or body registered as a disability service provider (refer ‘Registration’, page 40)\(^1\).

A number of areas of the Act will be underpinned by extensive policy and/or guidelines. These will be developed in consultation with disability service providers, with final documents available to disability service providers before commencement of the Act on 1 July 2007.

\(^1\) Refer to Appendix 1 for a list of all definitions contained in the *Disability Act 2006*
General provisions

- Objectives – section 4
- Principles – section 5
- Persons with an intellectual disability – section 6
- Provision of advice, notification or information under the Act – section 7
- Information systems – section 39
- Disability service providers must provide information – section 89

These general provisions provide the framework for administering and implementing the rest of the Act.

Objectives – section 4

The objectives of the Act are to:

(a) advance the inclusion and participation in the community of persons with a disability

(b) promote a strategic whole of government approach in supporting the needs and aspirations of persons with a disability

(c) facilitate the planning, funding and provision of services, programs and initiatives for persons with a disability

(d) promote and protect the rights of persons accessing disability services

(e) support the provision of high quality disability services

(f) make disability service providers accountable to persons accessing those disability services

(g) ensure the efficient and effective use of public funds in the provision of disability services.

Principles – section 5

The Act outlines two sets of principles that, wherever possible, should be given effect to, in administering the Act and providing disability services. These principles relate to:

- people with a disability
- disability services.

Principles in relation to people with a disability

(1) Persons with a disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.

(2) Persons with a disability have the same right as other members of the community to:

(a) respect for their human worth and dignity as individuals

(b) live free from abuse, neglect or exploitation
(c) realise their individual capacity for physical, social, emotional and intellectual development

(d) exercise control over their own lives

(e) participate actively in the decisions that affect their lives and have information and be supported where necessary, to enable this to occur

(f) access information and communicate in a manner appropriate to their communication and cultural needs

(g) services which support their quality of life.

**Principles in relation to disability services**

(3) Disability services should:

(a) advance the inclusion and participation in the community of persons with a disability with the aim of achieving their individual aspirations

(b) be flexible and responsive to the individual needs of persons with a disability

(c) maximise the choice and independence of persons with a disability

(d) be designed and provided in a manner that recognises different models of practice may be required to assist people with different types of disability and at different stages in their lives to realise their physical, social, emotional and intellectual capacities

(e) enable persons with a disability to access services as part of their local community and foster collaboration, coordination and integration with other local services

(f) as far as possible be provided in a manner so that a person with a disability need not move out of his or her local community to access the disability services required

(g) be of high quality and provided by appropriately skilled and experienced staff who have opportunities for on-going learning and development

(h) consider and respect the role of families and other persons who are significant in the life of the person with a disability

(i) acknowledge the important role families have in supporting persons with a disability

(j) acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities

(k) where possible strengthen and build capacity of families who are supporting persons with a disability

(l) have regard for the needs of children with a disability and preserve and promote relationships between the child, their family and other persons who are significant in the life of the child with a disability
(m) be provided in a manner that respects the privacy and dignity of persons accessing the disability services

(n) be provided in a way which reasonably balances safety with the right of persons with a disability to choose to participate in activities involving a degree of risk

(o) have regard for any potential increased disadvantage which may be experienced by persons with a disability as a result of their gender, language, cultural or indigenous background or location

(p) 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

(q) be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability

(r) be accountable for the quality of those services and for the extent to which the rights of persons with a disability are promoted and protected in the provision of those services.

(4) If a restriction on the rights or opportunities of a person with a disability is necessary, the option chosen should be the option which is the least restrictive of the person as is possible in the circumstances.

(5) It is the intention of Parliament that the principles specified in this section should wherever possible be given effect to in the administration of this Act and the provision of disability services.

Persons with an intellectual disability – section 6

The Act contains some provisions that are specific to people with an intellectual disability. Section 6 of the Act outlines principles and assessment criteria and references other areas of the Act that apply only to people with an intellectual disability.

Principles that apply to people with an intellectual disability

(1) The following principles apply specifically in respect of persons with an intellectual disability:

(a) persons with an intellectual disability have a capacity for physical, social, emotional and intellectual development

(b) persons with an intellectual disability have the right to opportunities to develop and maintain skills and to participate in activities that enable them to achieve valued roles in the community

(c) services for persons with an intellectual disability should be designed and provided in a manner which maximises opportunities for persons living in residential institutions to live in community based accommodation
(d) persons with an intellectual disability living in a residential institution have the right to a high quality of care and development opportunities whilst they continue to reside in the institution

(e) services for persons with an intellectual disability should be designed and provided in a manner that ensures developmental opportunities exist to enable the realisation of their individual capacities

(f) services for persons with an intellectual disability should be designed and provided in a manner that ensures that a particular disability service provider cannot exercise control over all or most aspects of the life of a person with an intellectual disability.

Section 6(2) of the Act makes it clear that the repeal of the *Intellectually Disabled Persons’ Services Act 1986* does not change the responsibility of the Minister and the Secretary to provide, manage, develop and plan services for people with an intellectual disability.

**Provision of advice, notification or information under the Act – section 7**

A number of areas of the Act require specific information to be provided to a person with a disability in writing or by notice or statement.

Section 7 requires that any advice, notification or information given to a person with a disability under the Act is explained to the person with a disability. This explanation must be, to the maximum extent possible, in the language and form of communication that the person is most likely to understand. Where reasonable, an explanation must be given both orally and in writing.

If a person does not appear to understand the information being given, the disability service provider must take reasonable steps to convey the information in a manner that the person is most likely to understand. To meet this requirement, a disability service provider may provide a copy of the advice, notice or information to a family member, guardian, advocate or other person chosen by the person with a disability.

If a person with a disability does not have a person to assist them understand the information being provided, the disability service provider can provide the information to another person who may assist the person with a disability to understand the information. The person chosen cannot be employed by, or a representative of, the disability service provider.
Information systems—section 39

Section 39 of the Act is very similar to the provisions in section 16 of the *Intellectually Disabled Persons’ Services Act 1986*. The new provisions have been updated to ensure that they allow for changes in information management and contain appropriate protections for the disclosure of information arising out of the provision of disability services under the Act.

Section 39 requires that the Secretary ensure the Department of Human Services maintains information systems to enable:

- planning, monitoring, evaluating, provision and funding of disability services
- the Secretary to meet the requirements of the Act, or other laws relating to disability.

This section also outlines provisions regarding disclosure of information about people with a disability accessing disability services. The Act specifies that it is an offence to disclose information about a person with a disability, where that information has been obtained through provision of a disability service or appointment to a position under the Act.

The Act also lists a range of exemptions where disclosure of information is not an offence. These include:

- where the release of information is required to meet a duty or perform a function under the Act
- with the consent of the person
- where it is necessary for the treatment or care of a person and the person is unable to consent, and may otherwise suffer detriment
- to a court or tribunal, in the course of a proceeding
- to the Public Advocate
- to the Senior Practitioner
- to the Disability Services Commissioner.
Disability service providers must provide information – section 89

Section 89 requires disability service providers to provide information to service users. This information must be provided as soon as a person starts to use disability services. Depending on the type and extent of the service that a person is accessing, the information required may be minimal or quite extensive.

The Act requires that the type of information to be provided includes:

- details of the disability service to be provided and any associated costs
- any conditions related to the provision of the disability service
- how a complaint can be made about the service provided
- details of any rights the person has under the Act.

If a person is a resident in a residential service, the disability service provider is not required to provide information outlined in this section if the information has already been provided in a residential statement (refer ‘Residential statement’ page 20).

The information that a disability service provider can provide to a service user is not limited to the information outlined in this section of the Act.

Key points for disability service providers:

- The objectives and principles provide the framework for administering and implementing the Act.
- The Act provides principles in relation to people with a disability and the provision of disability services.
- The Act contains specific principles and provisions in relation to people with an intellectual disability.
- Disability service providers must provide information required under the Act to service users in the language and form of communication that the person is most likely to understand.
- Where reasonable, information must be provided both orally and in writing.
- It is an offence for a disability service provider to disclose information about a person with a disability that has been obtained through the provision of a disability service or appointment under the Act.
- The Act outlines some exemptions where a disability service provider can disclose information.
- When a person starts to use a disability service, a disability service provider must provide them with information relevant to the services being provided.
Government leading change

- The Secretary: roles, functions and powers – sections 8–10
- Victorian Disability Advisory Council – sections 11–13
- State Disability Plan – section 37
- Disability Action Plans – section 38

The Secretary: roles, functions and powers – section 8–10

The Act outlines the role of the Secretary, which includes:

- plan, develop, fund or provide a range of services, programs and initiatives for people with a disability
- provide and fund programs and initiatives that facilitate people with a disability exercising their rights and responsibilities in the community
- collect and analyse data to comply with reporting requirements and meet the objectives of the Act
- administer the Act in accordance with its objectives and principles.

In addition, the Secretary has the following functions:

- promote awareness and understanding of disability in the community
- advance the inclusion and participation of people with a disability in the community
- develop policies for disability services
- develop and publish criteria to enable priority of access to disability services to be determined in a fair and equitable manner
- determine priorities in relation to policy development, resource allocation and the provision of disability services
- monitor, evaluate and review disability services
- promote the quality of disability services
- promote the establishment of appropriate training courses and ongoing training for people employed in the provision of disability services
- foster collaboration, coordination and integration in the provision of services to people with a disability
- make recommendations and provide reports and advice to the Minister in relation to people with a disability and the operation of the Act.

The Secretary also has powers to provide funds and enter into contracts.
Victorian Disability Advisory Council – sections 11–13

The Victorian Disability Advisory Council was established in 2001 to provide advice to the Minister for Community Services. The council provides a direct means of raising with the Minister the issues that matter to people with a disability on whole-of-government policy issues.

Sections 11–13 of the Act prescribe the establishment of the council, its functions and membership. The inclusion of these provisions in the Act strengthens the rights of people with a disability to participate in decision making on whole-of-government policy issues.

The Act provides that council members will be appointed by the Minister from people who:

• reflect the diversity of people with a disability
• reflect the cultural and Indigenous backgrounds of people with a disability
• have appropriate knowledge and experience in matters relevant to people with a disability, including children with a disability
• so far as is possible, have personal experience of disability.

The Minister must ensure that the majority of council members are people with a disability.

Members of the council hold office for a period of time not exceeding three years but are eligible for reappointment.

The Act outlines functions for the council, including:

• providing advice to the Minister on issues such as whole-of-government policy and planning for people with a disability
• raising community awareness of the rights of people with a disability
• monitoring strategies to increase the inclusion and participation of people with a disability in the community.

The Act also outlines council procedures, such as conditions for appointment and removal of members.

State Disability Plan – section 37

Section 37 of the Act outlines a requirement for the Minister to ensure a State Disability Plan is prepared every four years from January 2013. The current State Disability Plan 2002–2012 will continue to have effect until a new plan is required in January 2013.

The purpose of the State Disability Plan is to establish goals to assist in furthering the objectives and principles outlined in the Act.
The Act specifies that the State Disability Plan must:

- identify the needs of people with a disability
- establish goals and priorities for the support of people with a disability
- identify objectives and policy priorities for the development and delivery of services for people with a disability
- identify strategies for achieving those objectives and priorities.

In preparing a State Disability Plan, the Act specifies that recognition should be given to the fact that people with different types of disability have different needs and, therefore, may require different strategies to meet those needs.

**Disability Action Plans – section 38**

The Act legislates the government’s policy commitment to the development of Disability Action Plans and is a key strategy to make public services accessible for people with a disability. Disability Action Plans will reduce barriers for people with a disability in their roles as employees, as members of the community, and as people accessing the broad range of services and infrastructure available to Victorians.

The Act specifies that public sector bodies (defined as government departments, prescribed statutory authorities and prescribed statutory corporations) must develop Disability Action Plans for the purpose of:

- removing barriers faced by people with a disability in accessing goods, services and facilities
- removing barriers faced by people with a disability in obtaining and maintaining employment
- promoting the inclusion and participation in the community of people with a disability
- achieving changes in attitudes and practices that discriminate against people with a disability.

The Act specifies that a plan prepared by a public sector body in compliance with the Commonwealth *Disability Discrimination Act 1992* is taken to be a Disability Action Plan under this section.

A public sector body must report on the implementation of its Disability Action Plan in its annual report.

In relation to local government, the Act recognises both the complexity of state planning requirements for local governments and the importance of access to local services for people with a disability. The Act does this by specifying that if a local council does not develop a Disability Action Plan, the components required for a Disability Action Plan must be addressed in the council plan provided under the *Local Government Act 1989*. 
Key points for disability service providers:

- The Secretary has a range of functions and powers that relate to both the provision of disability services and the participation and inclusion of people with a disability in the community.
- The Act prescribes the establishment of the Victorian Disability Advisory Council, its functions and membership.
- The current State Disability Plan 2002–2012 will continue to have effect until a new plan is required in January 2013.
- The Act strengthens the government’s commitment to the development of Disability Action Plans and is a key strategy to make public services accessible for people with a disability.
Streamlined access

• Definitions – section 3
• Accessing disability services – sections 49–51
• Persons with an intellectual disability – section 6

The Act does not alter the target group for access to disability services. However, the Act does change the way access to disability services occurs by providing for a streamlined system to determine whether a person has a disability, rather than the current system which is complex and based on disability type.

The Act aims to ensure that all people with a disability, regardless of what type, will now access disability services through a single and simple process.

Definitions – section 3

The Commonwealth State Territory Disability Agreement definition of disability is used in the Act, but is adapted to reflect the direction of the Victorian State Disability Plan 2002–2012.

Section 3 of the Act outlines the target group for disability services. It states that:

‘disability’ in relation to a person means:

(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

Section 3 of the Act includes a definition of intellectual disability. This is the definition currently included in the Intellectually Disabled Persons’ Services Act 1986:

‘intellectual disability’, in relation to a person over the age of 5 years, means the concurrent existence of:

(a) significant sub-average general intellectual functioning; and

(b) significant deficits in adaptive behaviour—

each of which became manifest before the age of 18 years
Section 3 also includes a definition of developmental delay. This definition is also currently included in the *Intellectually Disabled Persons’ Services Act 1986*:

`developmental delay` means a delay in the development of a child which:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is manifested before the child attains the age of 6 years; and

(c) results in substantial functional limitations in one or more of the following areas of major life activity—
   (i) self-care;
   (ii) receptive and expressive language;
   (iii) cognitive development;
   (iv) motor development; and

(d) reflects the child’s need for a combination and sequence of special interdisciplinary, or generic care, treatment or other services which are of extended duration and are individually planned and coordinated.

**Accessing disability services – sections 49–51**

New access arrangements will complement and not supersede the current Disability Support Register requirements.

Under the Act, disability service providers are able to consider requests for access to disability services from a person with a disability, or a person on their behalf. Only where there is some dispute about whether the person has a disability will there be a need to arrange a formal assessment. In many ways, these changes reflect the current practice for individuals with a disability (other than intellectual disability) and ensure that a consistent system can be applied to access disability services.

Sections 49–51 of the Act outline how people with a disability can access disability services.

Section 49 states that a person with a disability, or a person on their behalf, may request services from a disability service provider. The disability service provider may require that a person provides information or undergoes assessment to determine whether the person has a disability. A disability service provider may then agree to, or refuse, the request for services.

Section 49(5) states that if a disability service provider agrees to provide a service to a person without requiring an assessment, the provision of the disability service does not of itself mean that the person has a disability.

If a disability service provider refuses a request for services, they must inform the person who made the request, within 14 days, that the request has been refused and the reason the request was refused.
A range of reasons may lead to a disability service provider refusing to provide a service. These may include, for example, a person not being a priority for that service, or a service not being available through that service provider.

The Act specifies action only when a service is refused because the disability service provider believes a person does not have a disability. Section 50 states that if services are refused for this reason, the person seeking services has a right to ask the Secretary to decide whether they have a disability.

If a person asks the Secretary to decide whether they have a disability, the Secretary may:

• require the person requesting disability services or the disability service provider to provide any relevant information

• determine the appropriate process to be used to make a decision.

If the Secretary determines a formal assessment is required, this must be commenced within 30 days of a request being received for a decision as to whether a person has a disability.

The Secretary may defer an assessment for up to three months if the Secretary determines any assessment completed before then is unlikely to reliably establish whether the person has a disability.

The Secretary must notify the person of their decision as to whether the person has a disability within 14 days of making the decision. The Secretary must also advise the person that they may seek a review of the decision by the Victorian Civil and Administrative Tribunal (VCAT).

An application for a review of the decision must be made to VCAT within 28 days of the person being notified by the Secretary.

On reviewing the decision, VCAT may:

• confirm the decision of the Secretary

• return the matter to the Secretary for further consideration

• make its own decision as to whether the person has a disability.

Section 51 states that a decision by the Secretary that a person has a disability does not of itself entitle a person to services under the Act.
Persons with an intellectual disability – section 6

Section 6 of the Act outlines some provisions that are specific to people with an intellectual disability (refer ‘Persons with an intellectual disability’ page 4).

Section 6(3) is relevant to access to disability services as it outlines assessment criteria for intellectual disability. The assessment criteria are relevant if formal testing is required under the new access arrangements as outlined above. These criteria are the same criteria currently included in the *Intellectually Disabled Persons’ Services Act 1986*.

Section 6(5) specifies that the Act does not require the Secretary to use standardised testing in assessing whether a person has an intellectual disability.

Section 6(9) specifies that if the Secretary is satisfied that a person has an intellectual disability, the Secretary may, for the purposes of any Act or regulation, provide a statement that a person has an intellectual disability within the meaning of the Act.

Key points for disability service providers:

- The Act maintains the current target group for access to disability services.
- The Act changes the way people access disability services by providing for a streamlined system that is not based on disability type.
- A person with a disability, or a person on their behalf, may request services from a disability service provider. This reflects to some extent the current practice for individuals with a disability (other than an intellectual disability).
- A disability service provider may accept a request, or refuse a request, which may be for a range of reasons.
- If the reason for refusing the request is because the disability service provider believes that the person does not have a disability, the person has a right to have the Secretary make a decision regarding whether they have a disability.
- If the Secretary decides that the person does not have a disability, the person may seek a review by VCAT.
- A decision by the Secretary that a person has a disability does not of itself entitle a person to services under the Act.
Planning for individuals

• Guiding principles for planning – section 52
• Planning – section 53
• Support plan – section 54
• Planning for persons with an intellectual disability – section 55
• Transitional provisions – section 223

The Act outlines an approach to planning that reflects the reorientation of disability services. The Act enhances the individualised planning and support approach, which supports people with a disability to explore their goals and needs within the context of the community.

Guiding principles for planning – section 52

Under the Act, planning will take place within the individualised planning and support framework, which is about self-determination, community membership and citizenship. This is emphasised through the guiding principles for planning.

Section 52 of the Act states that planning for the purposes of this part of the Act (sections 52–55) should be undertaken to the extent to which it is reasonably practicable in accordance with the following principles:

Planning should:

(a) be individualised
(b) be directed by the person with a disability
(c) where relevant, consider and respect the role of family and other persons who are significant in the life of the person with a disability
(d) where possible, strengthen and build capacity within families to support children with a disability
(e) consider the availability to the person with a disability of informal support and other support services generally available to any person in the community
(f) support communities to respond to the individual goals and needs of persons with a disability
(g) be underpinned by the right of the person with a disability to exercise control over their own life
(h) advance the inclusion and participation in the community of the person with a disability with the aim of achieving their individual aspirations
(i) maximise the choice and independence of the person with a disability
(j) facilitate tailored and flexible responses to the individual goals and needs of the person with a disability
(k) provide the context for the provision of disability services to the person with a disability and where appropriate coordinate the delivery of disability services where there are more than one disability service providers.
The Act does not contain a definition of planning but specifically notes that planning encompasses a range of responses, from a brief discussion and agreement about actions required to an extensive process and the development of a plan across a range of life areas.

**Planning – section 53**

The Act provides that a person with a disability, or a person on their behalf, may request that a disability service provider provide them with assistance with planning. Within a reasonable time of the request, the disability service provider must arrange for this assistance to be provided. This means that assistance with planning may be undertaken directly by the disability service provider or the disability service provider may arrange for the assistance to be provided.

**Support plan – section 54**

The provisions in the Act regarding support plans apply when a person is receiving ongoing disability services.

If a person starts to regularly access disability services, the disability service provider must, in consultation with the person, prepare a support plan within 60 days.

The disability service provider must ensure that while a person continues to receive disability services, their support plan is reviewed at least once every three years. However, a person with a disability, a person on their behalf, or the disability service provider may initiate a review of a support plan at any time.

If a person stops receiving ongoing disability services, their support plan ends.

**Planning for people with an intellectual disability – section 55**

The Act contains additional planning requirements for people with an intellectual disability. Section 55 provides that if a person with an intellectual disability has requested disability services from a disability service provider, the disability service provider must offer the person assistance with planning.

If the offer of assistance with planning is accepted, the disability service provider must arrange for this assistance to be provided within a reasonable time.

A person with an intellectual disability residing in a residential institution must have their support plan reviewed at least every 12 months.
Transitional provisions – section 223

Transitional provisions enable a transition from the old legislation to the new Act. The Act outlines some transitional provisions in relation to planning. These provisions relate to plans for people with an intellectual disability and people with a disability other than an intellectual disability.

People with an intellectual disability

When the Act commences, a person with an intellectual disability may have an individual program plan and/or a general service plan under the *Intellectually Disabled Persons’ Services Act 1986*. Section 223 provides that these plans will continue to have effect under the Act until the next review date specified in the plan.

At the time of review of an individual program plan, a support plan may be developed if the person is receiving ongoing disability services.

At the time of review of a general service plan:

• if the person is receiving ongoing disability services, a support plan must be developed

• if the person is not receiving ongoing disability services, the person must be offered assistance with planning in line with section 55.

People with a disability

When the Act commences, a person with a disability, other than an intellectual disability, may also have an existing plan continue under the new Act. This will occur where a person is receiving ongoing disability services and has a plan for the provision of those services.

Section 223 outlines that the plan will continue to have effect for a period of 12 months from the time the Act commences or until its expiry date, whichever occurs first. If a person continues to receive ongoing disability services when the plan expires, a new support plan must be prepared.
Key points for disability service providers:

- The guiding principles for planning establish a framework for planning under sections 52–55 of the Act.
- Planning in the Act encompasses a range of responses, from brief discussion and agreement to extensive processes and the development of a comprehensive plan.
- A person with a disability, or a person on their behalf, may request that a disability service provider provide them with assistance with planning.
- A disability service provider may directly provide or arrange for this assistance to be provided.
- A support plan must be developed for people who are receiving ongoing disability services.
- A support plan must be reviewed once every three years as a minimum requirement.
- People with an intellectual disability who request a service must be offered assistance with planning.
- There are transitional provisions to ensure that existing plans can continue at the time of commencement of the Act.
- When existing plans are reviewed or cease, the new planning provisions will take effect.
Strengthening rights in residential services

• General provisions – sections 56–62
• Community residential units – sections 63–85
• Residential institutions – sections 86–88
• Provisions related to the management of money – sections 90–96

General provisions – sections 56–62

Section 3 defines a residential service as:

…residential accommodation with rostered staff provided by, or on behalf of, a disability service provider for the purpose of providing disability services to—

(a) one or more residents in a community residential unit; or

(b) one or more residents in a residential service other than a community residential unit.

Sections 56–62 of the Act create specific rights for people who live in residential services and impose specific obligations on disability service providers. The rights and obligations outlined in this part of the Act are created while:

• enabling the support needs of people with a disability to be met
• enabling the obligations of disability service providers to be fulfilled
• balancing individual rights and needs, and the systemic demands of providing disability services across the state
• applying regardless of whether the disability service provider is the owner or landlord of the property where the residential services are provided.

The Residential Tenancies Act 1997 does not apply to residential services.

Residential statement – section 57

Section 57 specifies that a disability service provider who provides residential services must give a residential statement to a person, when that person starts living at a residential service. The information given in the residential statement must include:

• the type of residential services to be provided
• the length of time that the residential statement covers
• the amount to be paid as the residential charge and what the residential charge covers
• any conditions that apply to the provision of the residential services.

A statement of resident’s rights and duties in a form approved by the Secretary must also be attached to the residential statement and must include information such as:

• the right to see a community visitor
• the right to make a complaint
• how to make a complaint.
The disability service provider must give the person reasonable notice of any change to the information contained in the residential statement.

The disability service provider is not required to provide further information under section 89, if the information required in that section is already covered in the residential statement (refer ‘Disability service providers must provide information – section 89’ page 7)

The residential statement must meet the requirements of section 7 and may, under specific circumstances, be provided to another person if the person with a disability is unable to understand the information in the statement (refer ‘Provision of advice, notification, or information under this Act – section 7’ page 5).

**Duties of a disability service provider providing residential services – section 58**

The Act creates a number of duties for disability service providers providing residential services. These include that the disability service provider must:

- take reasonable measures to ensure residents are treated with dignity and respect
- ensure premises and fixtures are maintained in good repair
- minimise any disruption to residents when undertaking repairs or renovations
- not unreasonably interfere with a resident’s right to privacy or proper use and enjoyment of the premises
- take reasonable measures to ensure the security of a resident’s property
- not unreasonably limit or interfere with a resident’s access to parts of the residential service.

A resident’s access to parts of the residential service is not unreasonably limited or interfered with, if the limitation or interference is in accordance with the resident’s:

- behaviour management plan, which has been lodged with the Senior Practitioner
- treatment plan
- a direction of the Senior Practitioner (refer ‘Senior Practitioner’ page 46).

The disability service provider is also required to implement strategies to minimise the impact on other residents in the residential service.

If the disability service provider is not the owner/landlord of the premises, the disability service provider must undertake the processes required under the agreement they have with the owner of the premises to meet the duty to ensure that the premises is maintained.
Duties of residents – section 59

Section 59 outlines a range of duties for residents. These include that the resident must:

• use the premises for residential purposes only
• pay the specified charges on the due date
• maintain their room in a manner that does not create a fire or health hazard
• notify the disability service provider of any damage caused
• contribute to the cost of any damage caused intentionally.

The resident must not:

• use the premises for illegal purposes
• intentionally damage any part of the premises
• intentionally do anything to interfere with the rights of other residents to the proper use and enjoyment of the premises.

Entry to a resident’s room – section 60

The Act outlines specific circumstances in which a disability service provider may enter a resident’s room.

After giving 24 hours notice in writing, these include to:

• undertake maintenance or repairs
• show the room to a prospective resident
• show the room to a prospective buyer or lender if the residential service is to be sold or used as security for a loan
• for valuation or insurance purposes.

A disability service provider may enter a resident’s room without notice if:

• the resident agrees to the entry at the time of entry
• there is an emergency
• entry is necessary to protect the health or safety of the resident or any other person on the premises
• the resident has abandoned the room
• it is necessary to undertake urgent repairs
• it is necessary to provide support services as defined in the Act or in the resident’s support plan, or implement the resident’s behaviour management plan or treatment plan.

When entering a room a disability service provider must do so in a reasonable manner and must not stay in the resident’s room for longer than is necessary to achieve the purpose of the entry without the resident’s consent.
Offences relating to interference with rights – section 62

This section outlines offences in relation to residential services. It specifies that, unless in accordance with the Act, a person must not:

• require or force a resident to vacate their room
• attempt to or take possession of a room in which a resident resides.

It also specifies that, except in accordance with the Act, a person must not, for the purpose of causing a resident to abandon a room:

• interfere with a resident’s proper use and enjoyment of the room
• do any other thing intended to cause a resident to abandon a room.

Community residential units – sections 63–85

Sections 63–85 outline specific requirements for residential services that are declared by the Minister, through notice in the Government Gazette, to be a community residential unit (CRU). Guidelines will be issued by the Secretary to assist disability service providers to determine which residential services will need to be declared as CRUs.

Residential charge – sections 65–70

These provisions provide for a disability service provider to charge a residential charge to a resident in a CRU.

The residential charge is to consist of an amount for the components that are provided to the resident in accordance with the resident’s residential statement. The Secretary may make and publish guidelines regarding residential charges.

These provisions also outline procedures for:

• Providing notice of an increase in a residential charge
  A disability service provider must give at least 60 days notice of an increase in a residential charge. The rent component of the residential charge must not be increased at intervals of less than six months.
• Methods of payment
  A resident may pay the residential charge in a form agreed by the disability service provider, including cash, cheque or direct debit.
• Receipts for payment
  A disability service provider must give a written receipt for payments received. Section 69 outlines requirements for the receipt for payment and the requirement for a disability service provider to keep a record of payments.
• Reducing a residential charge if service items included in the residential charge are reduced

If a disability service provider reduces the service items provided in the services components included in a residential charge, the disability service provider must reduce the residential charge by an amount agreed between the disability service provider and the resident. A reduction in a service item includes a reduction in the level or range of services provided in that item. If an agreement cannot be reached, the amount reduced is determined by the Victorian Civil and Administrative Tribunal (VCAT) following an application by the disability service provider or resident.

The Act also outlines issues that VCAT must have regard to when making a decision, such as guidelines issued by the Secretary. It also provides that, in addition to determining the amount to be reduced, VCAT may also determine the reduction took effect from the time the components were reduced to the resident, and any refund in residential charge owed to the resident.

Disputes relating to notice of increase in residential charge – sections 71–73

The Act provides for a resident to make an application to VCAT for review of a decision by a disability service provider to issue a notice of an increase in a residential charge. An application to VCAT must be made within 28 days of the notice of increase.

Following an application, VCAT may:

a) make an order that the increased residential charge is excessive
b) make an order that for a fixed time the residential charge cannot exceed a specified amount

c) both (a) and (b)
d) dismiss the application.

In making a decision, VCAT must have regard to factors including:

• the amount paid by other residents in the same premises for components included in the residential charge
• the amount payable by residents of similar CRUs
• the state of repair and general condition of the premises and room
• any variation in the cost of providing the components
• guidelines issued by the Secretary.

VCAT cannot declare an amount to be excessive under this provision unless it is above the prescribed amount.
Notice of temporary relocation – section 74

A disability service provider may give a resident a notice of temporary relocation from a CRU if:

• the resident endangers the safety of other residents or staff
• the resident is causing serious disruption to other residents
• the resident is a danger to themselves and cannot continue to be supported in the CRU
• it is necessary for the resident’s safety or wellbeing
• the resident has intentionally damaged the room or premises
• the resident has used the premises for an illegal purpose
• the premises is not suitable for the provision of disability services
• the disability service provider intends to repair the room and has obtained all the necessary permits and consents to carry out the work and the work cannot be properly carried out unless the resident has first vacated the room
• due to a change in the resident’s support needs, the type of support provided at the CRU is no longer appropriate to meet the resident’s needs.

When a disability service provider issues a notice of temporary relocation, unless another time is specified in the notice, the notice has effect immediately after being given. The disability service provider must meet the following provisions:

• a relocation period must be specified for a period not exceeding 90 days
• the Secretary and Public Advocate must be notified and the disability service provider may seek assistance from the Secretary in obtaining suitable alternative accommodation for the person
• during the temporary relocation period the resident’s room may only be used for respite and emergency purposes
• at the end of the temporary relocation period if the grounds for the relocation still exist, the disability service provider must issue a notice to vacate
• depending on which grounds the notice of temporary relocation was given, a support plan or behaviour management plan must be developed or reviewed for the resident, unless a review has been conducted in the previous three months
• at expiry of the notice of temporary relocation, the resident is entitled to return to the CRU unless a notice to vacate has been given
• the disability service provider must take reasonable steps to resolve the matter which led to the notice as soon as is reasonably possible in the circumstances
• any steps taken to resolve the matter that led to the notice being issued do not affect the validity of the notice.
Termination of residency – section 75
A residency in a CRU is terminated:
• by agreement in writing between the resident and disability service provider
• by a notice to vacate given to the resident by the disability service provider
• by a notice of intention to vacate given by the resident to the disability service provider
• if the resident dies
• if the resident has abandoned the room
• if the resident moves to another residence without giving notice of intention to vacate
• if the resident becomes subject to a criminal order or Supervised Treatment Order preventing the resident from residing at the CRU for more than three months
• if VCAT makes an order terminating the residency.

Notice to vacate by disability service provider – sections 76–85
Section 76 of the Act specifies that a disability service provider may give a resident notice to vacate a CRU if:
a) the resident endangers the safety of other residents or staff
b) the resident is causing serious disruption to other residents
c) the resident is a danger to themselves and cannot continue to be supported in the CRU
d) it is necessary for the resident’s safety or wellbeing
e) the resident has intentionally damaged the room or premises
f) the resident has used the premises for an illegal purpose
g) the resident has failed to pay the residential charge
h) the disability service provider intends to repair, renovate or reconstruct the premises and the work cannot be carried out unless the resident vacates
i) disability services will not continue to be provided at the premises
j) the premises is not suitable for the provision of disability services
k) due to a change in the resident’s support needs, the type of support provided at the CRU is no longer appropriate to meet the resident’s needs
l) the premises is to be sold or offered for sale
m) no reason is to be specified.
A disability service provider must follow the provisions for giving notices. These include that:

- a notice to vacate cannot be given for the reasons outlined in (a)–(f) and (j)–(k) above, unless a notice of temporary relocation issued on any ground has already been given at least 24 hours previously.

- the notice to vacate must specify a date to vacate that is at a minimum 28 days from when the notice was given, except as outlined above:
  - (g)–(i) and (l) – minimum 60 days
  - (m) no reason specified – minimum 120 days

- a notice to vacate must specify the grounds for the notice and state the termination date.

**Effect of notice to vacate – section 77**

A disability service provider can issue a notice to vacate after a notice of temporary relocation has been issued. The notice of temporary relocation continues in force until the end of the period of notice applying to the notice to vacate. The disability service provider must continue to provide alternative accommodation to the resident until the end of the notice to vacate or, if an appeal is lodged at VCAT, until that appeal is determined. Another resident cannot be accommodated in the room at the CRU until the notice periods are met or an appeal has been determined by VCAT.

**Notice of intention to vacate by resident – section 80**

A resident can give notice of their intention to vacate to the disability service provider at any time. This notice must be in writing and must specify the date on which the resident intends to vacate their room. The resident’s guardian or administrator, where appointed, can give this notice on behalf of the resident.

**Withdrawal of notice – section 81**

The disability service provider and the resident can withdraw any notice given by them to the other party by issuing a notice of withdrawal. A notice of withdrawal can be given at any time before the resident has vacated the room. The notice of withdrawal must be in writing and signed by the person who gave the notice which is being withdrawn and given to the person who was given the notice that is being withdrawn.

**Application to VCAT for review of notice to vacate – section 82**

A resident may apply to VCAT for review of a notice to vacate. The application must be made within 28 days of the notice being given. On hearing an application under this section, VCAT may determine whether or not the notice to vacate is valid.
If VCAT determines that the notice to vacate is valid, VCAT may confirm the notice and issue a possession order. If VCAT determines that the notice to vacate is not valid, VCAT may declare that the notice to vacate is invalid. VCAT may also dismiss the application.

**Application to VCAT for possession order – sections 83–85**

A disability service provider may apply to VCAT for a possession order for a room if a notice to vacate has been given to a resident. An application to VCAT must be made within 30 days of the termination date given in the notice to vacate.

VCAT must make a possession order if:

- the disability service provider was entitled to give the notice to vacate and
- the notice to vacate has not been withdrawn.

VCAT cannot specify a date in a possession order that is earlier than the termination date in the notice to vacate.

Under certain circumstances, VCAT may dismiss or adjourn an application for a possession order. The Act outlines the actions that VCAT may take on the resumption of an adjourned hearing.

A possession order must include:

- the date by which the resident must vacate the room and CRU, being a date not more than 30 days after the possession order is made
- a direction to the resident to vacate the room and CRU by the date specified in the order
- a warning that if the resident fails to comply with the direction to vacate the room and CRU, they may be forcibly removed from the room and the CRU.

Applications for possession orders will only be used as a last resort and it is expected that all other means of settling the issue would be used prior to an application being made to VCAT.

**Residential institutions – sections 86–88**

These sections of the Act are in line with the current provisions of the *Intellectually Disabled Persons’ Services Act 1986*.

These sections allow for a residential service to be proclaimed by the Governor-in-Council to be a residential institution. They also deem the current residential institutions known as Sandhurst, Colanda and Kew Residential Services to be residential institutions.
Section 87 outlines the criteria for admission of a person to a residential institution and includes that:

- the person has an intellectual disability
- the person requires services that can be provided by admission to a residential institution
- it is the best choice of services for increasing a person’s independence and is least likely to produce a loss of skills or harm to the person
- or
- it is the option which is the least restrictive of the person as is possible in the circumstances
- or
- the person or a person with whom they live will suffer serious physical or emotional harm unless they are admitted to the residential institution.

An application can be made to VCAT to review a decision to admit a person to a residential institution, other than when a person has been admitted under an order for compulsory treatment under the Act (refer ‘Provisions applying to security residents’ page 55).

**Provisions relating to the management of money – sections 90–96**

Sections 90–96 make it an offence for a disability service provider to act as a financial administrator for a person with a disability to whom they are providing services. However, a residential service may manage a specified amount of money for a resident. This may only occur with the consent of the resident or the resident’s administrator or guardian. Section 93 outlines conditions that need to be met by a residential service when managing the money of a resident. These include:

- keeping a copy of the consent for the management of the resident’s money
- keeping the money of the resident in a secure place
- keeping records, including receipts of the money that is spent
- providing monthly statements to the resident, or the resident’s administrator or guardian, of money received and spent during the month
- providing the resident, or the resident’s administrator or guardian, access to the resident’s financial records when requested.

The provisions regarding the Resident’s Trust Fund in the *Intellectually Disabled Persons Services Act 1986* have been carried over to the Act.
Key points for disability service providers:

• The Act creates rights for people residing in residential services and obligations on disability service providers who provide residential services.

• Disability service providers must provide residents with a residential statement when they commence residing at a residential service.

• The Act outlines duties for disability service providers, including to ensure that there is a reasonable balance between the rights of residents and the safety of all residents in the residential service.

• The Act outlines duties for residents.

• The Act also outlines specific requirements in relation to room entry, with which disability service providers must comply.

• A residential service may be declared by the Minister to be a community residential unit.

• The Act outlines additional requirements for community residential units, particularly in relation to residential charges and relocation of residents.

• A number of these requirements are reviewable by VCAT.

• A residential service may be proclaimed as a residential institution.

• The criteria for admission to a residential institution is outlined in the Act and a decision to admit a person to a residential institution is reviewable by VCAT.

• It is an offence for a disability service provider to act as a financial administrator for a person with a disability to whom they are providing services, although a residential service may manage a specified amount of money for a resident under certain conditions.

• The provisions regarding the Resident’s Trust Fund in the *Intellectually Disabled Persons Services Act 1986* have been carried over to the Act.
Building strong complaint and review systems

- Internal process for complaints – sections 104–106
- Disability Services Commissioner – sections 14–19
- Complaints to Disability Services Commissioner – sections 107–128
- Disability Services Board – sections 20–22

The Act strengthens complaints and review systems with the aim of improving the quality of service provision for people with a disability. It strengthens both internal and independent complaints and review processes by:

- ensuring disability service providers have a system for effectively managing complaints made by people with a disability and their representatives
- establishing an independent Disability Services Commissioner to investigate and conciliate complaints relating to disability services; and
- providing additional mechanisms for review by the Victorian Civil and Administrative Tribunal.

All disability service providers, both government and community services organisations, will be accountable to the Disability Services Commissioner for complaints arising out of the provision of a disability service. The Disability Services Commissioner will be required to report annually to Parliament.

Internal process for complaints – sections 104–106

Section 104 requires disability service providers to have a system for dealing with complaints made by people using their services.

These sections of the Act state that disability service providers must:

- develop and operate an internal process for managing complaints about the services that they provide
- report annually to the Disability Services Commissioner about the number of complaints they receive and how these complaints were dealt with
- take all reasonable steps to ensure that a person using their service is not adversely affected by making a complaint.

Disability service providers must also ensure that people using their service know how a complaint can be made about the service provided. This is part of the information that must be provided to service users under section 89 of the Act (refer ‘Disability service providers must provide information’ page 7)
Disability Services Commissioner – sections 14–19

The Disability Services Commissioner will have a significant role in improving the quality of service provision by disability service providers.

Sections 14–19 of the Act provide for the establishment and functions of the Disability Services Commissioner, which are in line with those for the Health Services Commissioner under the Health Services (Conciliation and Review) Act 1987.

The Disability Services Commissioner is appointed by the Governor-in-Council for a period of up to five years, but can be reappointed.

The functions of the Disability Services Commissioner include to:
- investigate complaints relating to disability services
- identify causes of complaints and suggest ways of removing and minimising those causes
- provide advice or inquire into matters referred by the Minister or Secretary
- conciliate where a complaint has been made in relation to a disability service provider
- maintain a record of all complaints received
- publish information about complaints
- refer issues to the Disability Services Board for advice
- determine what action should be taken by a disability service provider where a complaint has been found to be justified
- provide education and information about complaints relating to disability services
- provide training about the prevention and resolution of complaints relating to disability services.

Section 17 specifies the powers of the Disability Services Commissioner when performing functions under the Act. These include to:
- consult with relevant people or bodies
- develop and suggest ways of dealing with complaints related to disability services
- provide advice to complainants regarding alternative ways of dealing with complaints
- encourage disability service providers to display and make available material produced by the Disability Services Commissioner regarding the resolution of complaints
- seek information from disability service users and providers about the operation of the disability services complaints system.

The Disability Services Commissioner may delegate powers under the Act.
The Disability Services Commissioner must produce an annual report that includes:

- information about the number and type of complaints and the outcome of complaints
- any other information requested by the Minister.

The annual report may also name a disability service provider who has unreasonably failed to take action to remedy a complaint after receiving notice from the Disability Services Commissioner. Before naming a disability service provider, the Disability Services Commissioner must give notice to the disability service provider to provide an opportunity for the disability service provider to object.

**Complaints to Disability Services Commissioner – sections 107–128**

These sections of the Act provide for an independent and accessible process for dealing with complaints about services provided by disability service providers. The Act provides the Disability Services Commissioner with broad and flexible discretion to entertain complaints across a wide spectrum. The Act states that a complaint can be made to the Disability Services Commissioner that arises out of the provision of a disability service.

A complaint can also be made to the Disability Services Commissioner if the complainant believes a disability service provider has not properly investigated or acted upon a complaint.

Any person may make a complaint to the Disability Services Commissioner. The Disability Services Commissioner could, in some circumstances, due to the discretion granted by the Act, entertain a complaint where a service has not been provided; for example, where a disability service provider failed to follow relevant guidelines when making the decision that a person did not meet the criteria for a service.

The Disability Services Commissioner is also able to decline to investigate a complaint in certain circumstances (refer to ‘Circumstances in which the Disability Services Commissioner may decline to consider a complaint – sections 114–115’ page 34). The Act is designed to enable the Disability Services Commissioner to decide, upon the facts presented, whether or not the complaint should be considered.

**How to make a complaint – sections 111–112**

A person can make a complaint orally, in writing, or by other means appropriate for the person in the circumstances. The Disability Services Commissioner may require that the person making the complaint provide further information within a specified period of time.
A person who makes a complaint to the Disability Services Commissioner must provide their name. However, the Disability Services Commissioner may keep this information confidential if special circumstances exist and it is in the complainant’s best interests. The Disability Services Commissioner may still consider a complaint if a person refuses to provide their name, if satisfied that the complaint requires investigation.

A person who makes a complaint may at any time withdraw the complaint. The Disability Services Commissioner must then stop dealing with the complaint, unless the Disability Services Commissioner considers that:

- the health, safety or wellbeing of the person with a disability may be affected
- the complaint may have been withdrawn due to victimisation, coercion or duress.

**Preliminary assessment of complaint – section 113**

After receiving a complaint, the Disability Services Commissioner must, within 28 days or a period the Disability Services Commissioner thinks is reasonable, decide whether to consider the complaint. To make this decision, the Disability Services Commissioner may, by written notice, invite a person to attend and discuss the complaint or produce a document.

The Disability Services Commissioner may attempt to resolve the complaint informally if appropriate.

**Circumstances in which the Disability Services Commissioner may decline to consider a complaint – sections 114–115**

The Act provides that the Disability Services Commissioner may decline to consider a complaint if:

- the person has not complied with a requirement for making a complaint
- the Disability Services Commissioner considers the complaint:
  - is frivolous
  - is vexatious
  - is misconceived
  - is lacking in substance
  - does not warrant investigation
  - has already been determined by another body, such as a court or tribunal
  - is being considered by another body
  - raises issues that require investigation by another body
  or
  - relates to an incident that occurred more than 12 months ago and there is no good reason for the delay in the complaint being made.
The Disability Services Commissioner must not refer a complaint for conciliation or investigate a complaint unless satisfied that all reasonable steps have been taken to resolve the matter directly with the disability service provider.

However, the Disability Services Commissioner may still take action if he or she believes that otherwise:

- the health, safety or welfare of the disability service user may be affected
- there is a risk that the disability service user may be victimised or intimidated in raising the matter with the disability service provider.

Within 14 days of deciding not to consider a complaint, the Disability Services Commissioner must give written notice to the person who made the complaint.

If the Disability Services Commissioner decides to consider a complaint, written notice must be given to the disability service provider within 14 days.

**Consideration of complaint suitable for conciliation – section 116**

If the Disability Services Commissioner undertakes to consider a complaint and the complaint is suitable for conciliation, the Disability Services Commissioner must make reasonable efforts to conciliate the complaint.

The purpose of conciliation is to encourage settlement of the complaint by:

- facilitating discussion about the complaint with the disability service provider and person who made the complaint
- assisting the parties to reach agreement, where possible.

If agreement is reached, the person who made the complaint or the disability service provider may request a written record of the conciliation agreement. The Disability Services Commissioner must prepare and certify the record.

**Dealing with a complaint – section 117**

The Disability Services Commissioner may stop dealing with a complaint if he/she believes the complaint cannot be conciliated and/or no further action is warranted.

At any time, the person who made the complaint and the disability service provider may resolve the matter by agreement. In this case, the person who made the complaint must notify the Disability Services Commissioner who must then stop dealing with the complaint.

The Disability Services Commissioner may re-open a complaint if the person who made the complaint provides additional information.
Investigation of a complaint – sections 118–120

These sections of the Act outline procedures for the investigation of complaints. The Disability Services Commissioner must investigate a complaint:

• that is considered not suitable for conciliation
• where conciliation has not been successful and further action is required.

The Act outlines some requirements for the Disability Services Commissioner when conducting an investigation. These include that:

• the procedure is at the discretion of the Disability Services Commissioner
• as little formality and technicality should be used as possible to permit the proper investigation of the matter
• the Disability Services Commissioner is not bound by the rules of evidence
• the Disability Services Commissioner is bound by the rules of natural justice.

If the Disability Services Commissioner considers that the person who made the complaint and the disability service provider cannot resolve the complaint, and the complaint is justified, the Disability Services Commissioner must decide what action should be taken to remedy the complaint.

In determining whether a complaint is justified or what action should be taken, the Disability Services Commissioner must have regard to the impact on the disability service provider and any other person accessing services from the disability service provider.

Within 14 days of deciding whether or not a complaint is justified, the Disability Services Commissioner must give written notice to the person who made the complaint and the disability service provider of:

• the decision
• any reasons for the decision
• where the complaint is justified, specify any actions to be undertaken, and
• advise that the Disability Services Commissioner may undertake an inquiry into what action the disability service provider has taken upon the complaint.

After receiving the written notice, the disability service provider must, within 45 days, provide a report to the Disability Services Commissioner about what action the disability service provider has taken in regard to the complaint. The Disability Services Commissioner may extend the period of time for the report in certain circumstances.

After the period of time for the report to be provided, the Disability Services Commissioner may, by written notice, require the disability service provider to produce information about what action has been taken upon the complaint. It is an offence for a disability service provider not to comply with this requirement.

The Disability Services Commissioner may conduct an inquiry into what action the disability service provider has taken upon a complaint.
Procedural issues – sections 121–128

Sections 121–128 of the Act deal with procedural issues, including:

- circumstances in which the Disability Services Commissioner is not required to give written notice
- the duty of the Disability Services Commissioner to stop proceedings in some circumstances
- the powers of the Disability Services Commissioner to compel attendance and call for evidence and documents
- restriction on the powers of the Disability Services Commissioner while a complaint is being dealt with by conciliation
- that the Disability Services Commissioner may apply for a warrant in respect of premises in certain circumstances
- that it is an offence to threaten or intimidate a person who has made a complaint.

Disability Services Board – sections 20–22

Sections 20–22 provide for the establishment of a Disability Services Board to provide advice to the Disability Services Commissioner and oversee the disability complaints system.

The Disability Services Board consists of 11 people appointed by the Minister. The board must include:

- three people who are able to express the opinions of disability service providers
- three people who are able to express the opinions of disability service users
- three people who have expertise that will benefit the board, who are not disability service users or providers or members of an association that advocates or represents disability service users or providers
- one person who is a representative of the Secretary
- one person who is a representative of the Health Services Commissioner.

The Minister must ensure that at least one member of the Disability Services Board is a person who can represent the interests of children with a disability.

Disability Services Board members are appointed for three years and can be reappointed.

The Act outlines the functions of the Disability Services Board. These include to:

- advise the Minister on the disability complaints system and the operations of the Disability Services Commissioner
- advise the Minister and the Disability Services Commissioner on issues referred by the Disability Services Commissioner
- provide expertise, guidance and advice to the Disability Services Commissioner
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A guide for disability service providers

• promote the Disability Services Commissioner and the operations of the Disability Services Commissioner

• refer matters to the Disability Services Commissioner for inquiry.

The Act also outlines procedures for the Disability Services Board.


The Act provides for a range of decisions to be made or reviewed by VCAT. This capacity substantially strengthens protections for people with a disability, who can now apply to VCAT for a review of specific decisions by a disability service provider. VCAT is able to substitute a decision for the original decision of the disability service provider. VCAT can also review some decisions of the Secretary on application by a disability service provider.

The decisions that can be made or reviewed by VCAT are discussed in more detail in relevant areas of this document:

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Key points for disability service providers:

- Disability service providers must develop and operate an internal process for managing complaints about the services that they provide.
- Disability service providers must ensure that people using their service know how a complaint can be made about the service provided.
- Disability service providers must report annually to the Disability Services Commissioner about the number of complaints they receive and how these complaints were dealt with.
- The Act allows for the appointment of a Disability Services Commissioner to conciliate and investigate complaints in relation to disability services.
- The Disability Services Commissioner has broad and flexible discretion to entertain complaints across a wide spectrum.
- The Disability Services Commissioner will report to Parliament annually.
- The Act establishes a Disability Services Board to provide advice to the Disability Services Commissioner and oversee the disability complaints system.
- The Act provides for a range of decisions to be made or reviewed by VCAT.
Supporting high quality services

- Registration of disability service providers – sections 40–48
- Standards and monitoring of performance – sections 97–100
- Appointment of administrator – sections 101–103
- Community visitors – sections 28–36, 129–132

Registration of disability service providers – sections 40–48

These sections of the Act outline administrative processes for registration as a disability service provider.

A service provider may apply to the Secretary for registration as a disability service provider. The Secretary may also require a service provider who has applied for funding under the Act to apply for registration as a disability service provider before funding is provided.

The Secretary may register a service provider as a disability service provider, if the service provider can provide a service to people with a disability in accordance with the requirements of the Act, and may impose any conditions on registration considered appropriate.

Registration, unless revoked, is for three years or longer as determined by the Secretary in each case. The Act provides for registration to be renewed and outlines circumstances where registration may be revoked.

A disability service provider may apply to VCAT for review of a refusal by the Secretary to grant registration or of a decision to revoke registration.

The Secretary must keep a register of disability service providers and make the register available for public inspection. The register must include the name, address and contact details of disability service providers. A disability service provider must notify the Secretary in writing if there is a change to the information recorded on the register.

A service provider receiving funding for the provision of a disability service under the *Intellectually Disabled Persons’ Services Act 1986* or *Disability Services Act 1991* at the time of commencement of the new Act is deemed to be registered as a disability service provider.

Standards and monitoring of performance – sections 97–100

The Quality Framework for Disability Services in Victoria is a framework for monitoring, measuring, and managing the quality of disability service providers, and supports the effective implementation of the standards for disability services across both government and community service sectors.

The Act will ensure that services are of high quality and accountable to people with a disability who use those services by allowing for the determination of standards for disability services and performance measures in relation to compliance with the standards.
The Quality Framework for Disability Services guides the way that supports will be provided and ensures that performance measures relating to compliance with the standards are clearly defined and able to be independently verified.

The Act specifies that the Minister must determine standards to be met by disability service providers when providing disability services under the Act. These standards must be published in the Government Gazette.

The standards to be determined by the Minister may include standards in relation to:

- service delivery
- support plans
- how complaints are managed
- how information is managed and privacy is maintained.

It is an offence for a disability service provider not to comply with the relevant standards applicable to the disability service provider.

Section 98 of the Act outlines the powers of the Secretary to specify, in relation to the standards, performance measures and monitor the performance of disability service providers.

The Secretary must publish in the Government Gazette different performance measures for:

- different categories of disability service providers
- different categories of disability services.

The Secretary may monitor the compliance of disability service providers with the relevant performance measures in relation to the standards and authorise a person or agency to conduct an independent review for this purpose. Disability service providers must provide reasonable assistance and access for independent monitoring.

If a disability service provider is considered to have breached or not complied with any relevant performance measure, condition of their contract or any requirement of the Act, the Secretary may direct the disability service provider to address the situation or to provide the disability service in accordance with specified conditions.

If the disability service provider does not address the situation or meet the specified conditions, the Secretary may:

- terminate the contract or stop funding the disability service provider until any breach is remedied or the conditions are complied with
- take action to remove the committee of management of the disability service provider.
Appointment of administrator – sections 101–103

The *Intellectually Disabled Persons Services’ Act 1986* allows for an administrator to be appointed where a disability service provider fails to provide an efficient or effective service or fulfil the requirements of its service agreement with the Secretary. This power is retained in the Act with additional description of its application.

The provisions regarding appointment of an administrator apply where, in the opinion of the Minister, a disability service provider:

- is inefficiently or incompetently managed
- has breached or not complied with a relevant standard
- has not met the conditions of their contract
- has requested an administrator take over the functions of the disability service provider under the Act.

Provisions regulating the appointment of an administrator include:

- that the Minister needs to give notice in writing to the disability service provider of the recommendation to appoint an administrator
- that the disability service provider may object to the appointment and request representation at a hearing into their objection.

The Minister may recommend to the Governor-in-Council that an administrator be appointed or an existing appointment be extended. On appointment of an administrator, the committee of management is dissolved. The appointed administrator is deemed to:

- be the committee of management to the extent necessary to meet the conditions under which the disability service provider is funded
- have all the powers necessary and may exercise any of the duties of the committee of management
- be subject to all the duties of the committee of management.

An administrator may be appointed to part of the business of a disability service provider and must work with the governing body to ensure consultative decision making for the continuity of the whole of the business.

The Governor-in-Council may order the date of re-establishment of the committee of management and the method of its re-establishment. The administrator ceases to be the committee of management on that date.
Section 103 of the Act outlines additional provisions where an administrator is appointed to a disability service that is providing residential services. These provisions include that the administrator may:

- enter and occupy the residential service
- manage and operate the residential service
- put into place a financial management system, including receiving payments of residential charges
- use, repair or replace any equipment
- prepare and distribute to residents any food stored at the residential service
- engage additional staff to work at the residential service.

The administrator must comply with any direction or guidelines issued by the Secretary in relation to administrators of residential services. Any contracts in place and necessary for the provision of goods or services at the premises before the appointment of the administrator remain in place. Any equipment or property, regardless of its ownership, that is necessary for the operation of the service, must not be removed without the permission of the administrator.

**Community visitors – sections 28–36, 129–132**

The Act maintains the provisions of the current legislation in relation to community visitors, but updates and strengthens these provisions.

Sections 28–36 of the Act deal with the appointment and functions of community visitors. The Governor-in-Council appoints community visitors on the recommendation of the Public Advocate.

The function of community visitors is to visit residential services and inquire into:

- the appropriateness and standard of premises for the accommodation of residents
- whether residents have adequate opportunities for inclusion and participation in the community
- whether services are provided in line with the principles outlined in section 5 of the Act
- whether information is provided to residents as required in the Act
- any case of suspected abuse or neglect of a resident
- the use of restrictive interventions and compulsory treatment
- any failure to comply with the provisions of the Act
- any complaint made to a community visitor by a resident.

The Act provides for a Community Visitors Board to oversee the functions of community visitors.
The Act provides for community visitors to provide various reports. These are:

- a twice-yearly report to the Community Visitors Board on visits made by community visitors
- a report to the Minister by the Community Visitors Board on any matters specified by the Minister or any matter the Community Visitors Board thinks should be considered by the Minister
- an annual report by the Community Visitors Board to the Minister on the activities of community visitors during the financial year, which must be presented to Parliament
- at any time a report on recommendations that should be considered by the Community Visitors Board.

Community visitors must not disclose or reproduce any information acquired in their role unless it is in the performance of their duties as a community visitor.

Sections 129–132 of the Act outline requirements for visits to residential services by community visitors.

A community visitor may visit a residential service, with or without notice, at a time that the community visitor thinks fit. A community visitor must visit a residential institution at least once a month. The Minister may direct that a community visitor visit a residential service.

Section 130 outlines the powers of inspection of community visitors. This section states that when a community visitor is visiting a residential service, they are entitled to:

- inspect any part of the premises
- see any resident
- make enquiries relating to the provision of services to the residents
- inspect any document related to any resident which is not a medical record
- inspect any medical record relating to a resident with the consent of the resident or resident’s guardian.

To fulfil these functions, community visitors must be given reasonable assistance by the residential service. The residential service must not refuse to provide reasonable assistance and must give full and true answers to questions asked by community visitors. The Act specifies that it is an offence not to meet these provisions.

A resident or a person on their behalf may ask a disability service provider to see a community visitor. The disability service provider must advise the Community Visitors Board within 72 hours of receiving a request. The Community Visitors Board must ensure the request is responded to within seven days, unless the board considers that the request is vexatious, frivolous or lacking in substance. The Community Visitors Board may also arrange for the Public Advocate to respond to the request if it is appropriate in the circumstances.

Disability service providers must keep a record of visits by community visitors.
Key points for disability service providers:

- The Secretary may provide registration as a disability service provider if a service provider can provide a service to people with a disability in accordance with the requirements of the Act.

- The Secretary must keep and make available for public inspection a register of disability service providers.

- A disability service provider may apply to VCAT for review of a refusal or revocation of registration by the Secretary.

- The Minister must determine standards to be met by disability service providers when providing disability services under the Act.

- The Secretary must specify performance measures in relation to the standards and may monitor the compliance of disability service providers with the performance measures.

- The Secretary may give directions if it is considered that a disability service provider has breached or not complied with the relevant performance measure or the conditions of their contract or any requirement in the Act.

- If directions are not complied with, the Secretary may take action to stop payment, terminate the contract or remove the committee of management.

- The power to appoint an administrator has been retained from the *Intellectually Disabled Persons’ Services Act 1986*.

- The Minister may recommend to the Governor-in-Council that an administrator be appointed to a disability service under certain circumstances.

- The Act provides for the appointment and functions of community visitors; these provisions have been strengthened and updated from the current legislation.

- Community visitors are able to inspect and make inquiries in relation to residential services.
Disability Act 2006

A guide for disability service providers

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

• Senior Practitioner – sections 23–27
• Restrictive interventions – sections 133–150
• Compulsory treatment – sections 151–201, 224(8)
• Amendments to the Sentencing Act 1991 – sections 226–230

The Act significantly strengthens protections for people with a disability by providing a much greater level of scrutiny and accountability for disability service providers who use restrictive interventions or compulsory treatment.

Senior Practitioner – sections 23–27

Sections 23–27 of the Act provide for the establishment and functions of the Senior Practitioner. The position of Senior Practitioner is integral to ensuring that the rights of people subject to restrictive interventions or compulsory treatment are protected and that appropriate standards in relation to these practices are met.

The Senior Practitioner has been established to ensure that disability service providers will be both more accountable in relation to restrictive interventions and compulsory treatment and better supported with increased access to specialist expertise, information and advice.

Disability service providers, both government and community service organisations, will have access to specialist advice, including secondary case consultation from the Senior Practitioner and an expert panel, which will be established as an adjunct to the legislation.

The Act provides for the Secretary to appoint a person with appropriate clinical qualifications and experience to the position of Senior Practitioner.

The Senior Practitioner has the following general functions in relation to restrictive interventions and compulsory treatment:

• develop guidelines and standards
• provide education and information
• provide advice to disability service providers to improve practices
• develop links to professional bodies and academic institutions to improve the knowledge and training of workers
• undertake research and provide information to disability service providers
• monitor and evaluate the use of these practices across disability services and make recommendations to the Minister and Secretary
• undertake any other functions as directed by the Secretary.

The Act provides that the Senior Practitioner must publish an annual report.
The Act provides the Senior Practitioner with special powers in relation to the use of restrictive interventions and compulsory treatment or when the Senior Practitioner believes on reasonable grounds that these practices are being used (other than in a private home). These powers include:

- visiting any premises where disability services are being provided
- investigating, monitoring or auditing the use of restrictive interventions and compulsory treatment
- inspecting and making copies of any documents related to a person to whom restrictive interventions or compulsory treatment are being used
- seeing any person involved in the development, implementation or authorisation of, or a person subject to, restrictive interventions or compulsory treatment
- requesting any information from a disability service provider
- by written order, directing a disability service provider that a practice, procedure or treatment must be discontinued or altered, or that a practice, procedure or treatment must be carried out.

If the Senior Practitioner directs that a practice, procedure or treatment is discontinued, the Senior Practitioner must assist in developing alternative strategies for managing the behaviour of the person affected.

**Restrictive interventions – sections 133–150**

Restrictive interventions are defined in section 3 of the Act as:

> ...any intervention that is used to restrict the rights or freedom of movement of a person with a disability including –
> (a) chemical restraint;
> (b) mechanical restraint;
> (c) seclusion.

Chemical restraint, mechanical restraint and seclusion are also defined in section 3 of the Act (refer ‘Definitions’, Appendix 1).

Currently, the use of restraint and seclusion is regulated for people with an intellectual disability under the *Intellectually Disabled Persons’ Services Act 1986*. Sections 133–150 will apply to all people with a disability as defined in the Act.

The purpose of these sections of the Act is to protect the rights of people who are subject to restrictive interventions to ensure that these interventions are not used unless the requirements in this part of the Act are met.
Approval to use restrictive interventions – sections 135–139

Disability service providers must apply to the Secretary for approval to use restrictive interventions. Only approved disability service providers can use restrictive interventions.

The application for approval must include any prescribed details and the name and title of the person who will be the Authorised Program Officer for the disability service provider. The Authorised Program Officer is responsible for ensuring that any restrictive intervention used by the disability service provider is administered in accordance with the Act.

A disability service provider must also advise the Senior Practitioner of the name and qualifications of the Authorised Program Officer. The Senior Practitioner must keep a register of Authorised Program Officers.

If the Secretary is the disability service provider, the Secretary must ensure an Authorised Program Officer is appointed.

The Secretary may revoke the approval of a disability service provider to use restrictive interventions. If the Secretary refuses to grant approval or revokes an approval to use restrictive interventions, the disability service provider may apply to VCAT for review of the decision by the Secretary.

Use of restraint and seclusion – section 140

Restraint and seclusion can only be used to prevent a person from causing physical harm to themselves or others, or destroying property in a manner that may cause harm to themselves or others.

Other criteria that need to be met include that:

• restraint or seclusion is the option which is the least restrictive of the person as is possible in the circumstances
• restraint or seclusion is included in the person’s behaviour management plan
• the use of restraint or seclusion is in accordance with the person’s behaviour management plan

and

• is only applied for the period of time authorised by the Authorised Program Officer.

The Act also outlines some specific requirements for the use of seclusion.

Use of restraint and seclusion must be included in behaviour management plan – section 141

Section 3 of the Act defines a ‘behaviour management plan’ as:

…a plan developed for a person with a disability which specifies a range of strategies to be used in managing the person’s behaviour including proactive strategies to build on a person’s strengths and increase their life skills.
If a disability service provider is satisfied that the criteria for the use of restraint and seclusion apply, and is proposing to use restraint or seclusion on a person with a disability, a behaviour management plan must be developed.

The behaviour management plan must:

• state the circumstances in which restraint or seclusion can be used
• explain how the use of restraint or seclusion will be of "benefit to the person" \(^2\)
• demonstrate that the use of restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances.

A behaviour management plan must be reviewed at intervals of not more than 12 months, or a shorter time as specified by the Authorised Program Officer or the Senior Practitioner.

A person with a disability may request a review of their behaviour management plan at any time.

The Act lists a number of people who must be consulted when a disability service provider is preparing or reviewing a behaviour management plan. These include the person with a disability, their guardian (if applicable), and any other disability service provider who is providing a disability service to the person.

Independent person – sections 143–144

The Authorised Program Officer must ensure that an independent person is available to explain to the person with a disability:

• the behaviour management plan and the proposed inclusion of the use of restraint or seclusion
• that they can seek a review of the decision to include the use of restraint or seclusion in the behaviour management plan
• any differences between the proposed behaviour management plan and any plan that currently exists in relation to the person.

If the independent person determines that the person with a disability does not understand the proposed inclusion of the use of restraint or seclusion in the behaviour management plan and the requirements of the Act are not being met, a report can be made to the Public Advocate.

After receiving a report from an independent person, the Public Advocate may refer the matter to the Senior Practitioner or initiate an application to VCAT for a review of the decision.

An independent person cannot be a disability service provider, or connected to a disability service provider, that does provide or has provided services to the person.

\(^2\) "Benefit to the person" is defined in section 3 as "maximising a person’s quality of life and increasing their opportunity for social participation" (refer ‘Definitions’, Appendix 1).
If a person with a disability advises the disability service provider or Authorised Program Officer that he or she does not consider the person assisting them is independent, the Authorised Program Officer must arrange for an independent person to assist the person with a disability.

If a person with a disability does not have access to an independent person through their personal support network, then a person will be provided through an Independent Person Program which will be established.

**Requirements for the use of restraint and seclusion – section 145**

Before restraint or seclusion can be used, the Authorised Program Officer must approve the inclusion of the use of restraint or seclusion in a person’s behaviour management plan. The Authorised Program Officer must not give this approval unless satisfied that the behaviour management plan has been prepared or reviewed in accordance with the Act.

Following approval by the Authorised Program Officer, the disability service provider must notify the person with a disability at least two days before the proposed use of restraint and seclusion:

- that the Authorised Program Officer has approved the use of restraint or seclusion in the person’s behaviour management plan
- of their right to seek a review by VCAT of the decision to include restraint or seclusion in their behaviour management plan.

The Authorised Program Officer must, within two working days of approving the behaviour management plan, provide a copy of the plan and the details of the independent person who assisted the person with a disability, to the Senior Practitioner.

**Review by VCAT – section 146**

A person with a disability can apply to VCAT for review of a decision to include the use of restraint or seclusion in a behaviour management plan within 28 days of notification from the disability service provider.

Upon review, VCAT may:

- confirm the decision to include the use of restraint or seclusion in the behaviour management plan and dismiss the application
- require the preparation of a new behaviour management plan by the disability service provider
- direct that the use of restraint or seclusion must be removed from the behaviour management plan.

VCAT must have regard to the requirements of this part of the Act in making its decision.
Use of restraint or seclusion in an emergency – section 147

This section applies where a person does not have a behaviour management plan approved by the Authorised Program Officer allowing for the use of restraint or seclusion.

Restraint or seclusion may still be used in an emergency where the disability service provider believes:

- there is an imminent risk of serious harm to the person or another person and
- it is necessary to use restraint or seclusion to prevent that risk.

In an emergency, restraint and seclusion must be:

- the option which is the least restrictive of the person as is possible in the circumstances
- authorised by the person in charge of the service
- notified to the Authorised Program Officer without delay.

The Authorised Program Officer must provide a monthly report to the Senior Practitioner on all instances of the emergency use of restraint or seclusion. The Act specifies the areas that must be included in the report.

Reports – sections 148–149

The Senior Practitioner must monitor the use of restraint and seclusion in accordance with this part of the Act. The Act states that the Senior Practitioner must advise the Authorised Program Officer of the intervals at which reports of the use of restraint or seclusion must be made (not exceeding 12 months). The current requirement under the *Intellectually Disabled Persons’ Services Act 1986* is that monthly reports are made regarding the use of restraint and seclusion.

A report provided to the Senior Practitioner must include the information required in a report regarding the emergency use of restraint and seclusion. It must also include all instances of restraint and seclusion used during the period for which the report is prepared, any information the Senior Practitioner requests, and any new behaviour management plan if the use of restraint or seclusion is to continue.

It is an offence to use restraint or seclusion except as provided for in the Act.

Use of other restrictive interventions – section 150

As discussed, section 3 defines restrictive interventions as ‘any intervention that is used to restrict the rights or freedom of movement of a person with a disability’.

‘Other restrictive interventions’ mean restrictive interventions other than restraint or seclusion. This may include things like physical restraint, or locking doors or cupboards.
The Senior Practitioner may require disability service providers to:

• provide reports on the use of other restrictive interventions
• develop behaviour management plans for the use of other restrictive interventions.

The Senior Practitioner may also:

• develop guidelines and standards in relation to other restrictive interventions
• audit and evaluate the use of other restrictive interventions
• prohibit or regulate the use of other restrictive interventions
• undertake research and provide advice to disability service providers in relation to other restrictive interventions.

**Compulsory treatment – sections 151–201, 224(8)**

There are no provisions in the current legislation to address compulsory treatment, although there are a small number of people with an intellectual disability receiving treatment in restricted environments. While some of these people may currently be subject to a criminal order, there are a number of gaps and deficiencies in the current regulation of these restrictive arrangements.

The Act regulates two types of compulsory treatment for people with an intellectual disability. The first is where a person has committed a criminal offence and is required to reside in a residential treatment facility by order of a court or the Parole Board, or is transferred from prison. The second is a civil order, a supervised treatment order, which can be made where a person resides in a restricted environment because they pose a significant risk of serious harm to others.

**Criminal**

**Residential treatment facilities – section 151**

This section of the Act allows for a residential service to be proclaimed by the Governor-in-Council as a residential treatment facility. The purpose of a residential treatment facility is to provide compulsory treatment to people with an intellectual disability.

A residential treatment facility may be proclaimed as a short-term or long-term facility. A person can only be admitted to a short-term residential treatment facility for a maximum of five years.

The Act proclaims the Intensive Residential Treatment Program of the Statewide Forensic Service to be a short-term residential treatment facility. The Long Term Treatment Program at the Plenty Residential Service will be proclaimed as a long-term residential treatment facility.
A residential treatment facility can only be operated by the Secretary. The Secretary must appoint an Authorised Program Officer for each residential treatment facility.

**Transitional provision – section 224(8)**

Section 224(8) outlines transitional provisions for people residing in a short-term residential treatment facility when the Act commences. This section states that a person in this situation is taken to be admitted to the residential treatment facility on the date of commencement.

**Admission to a residential treatment facility – section 152**

A person may only be admitted to a residential treatment facility if the Secretary is satisfied that:

• the person has an intellectual disability
• the person has been assessed as currently presenting a serious risk of violence to another person
• all less restrictive options have been tried or considered and are not suitable
• the residential treatment facility can provide treatment to the person and the treatment is suitable for the person
• the Senior Practitioner has been notified of the proposed admission and
• the person has an appropriate order allowing compulsory treatment to occur.

An appropriate order is:

• a residential treatment order ([Sentencing Act 1991](#))
• a parole order ([Corrections Act 1986](#))
• a custodial supervision order ([Crimes (Mental Impairment and Unfitness to be Tried) Act 1997](#))
• an order transferring a person from prison (refer section 166 page 55)
• an extended supervision order ([Serious Sex Offenders Monitoring Act 2005](#)).
Authorised Program Officer must prepare treatment plan – section 153

Within 28 days of a person being admitted to a residential treatment facility on an order other than a custodial supervision order, the Authorised Program Officer must develop a treatment plan. The treatment plan must:

- specify the treatment that will be provided to the person during the period of their treatment in a residential treatment facility
- state the expected benefit to the person from the treatment
- specify any restrictive interventions to be used
- specify the process and criteria for the resident to obtain leave of absence from the residential treatment facility
- set out a process for the resident to eventually return to live in the community.

Within two days of the treatment plan being developed, the Authorised Program Officer must:

- give a copy of the treatment plan to the person with a disability
- lodge the treatment plan with the Senior Practitioner.

The Authorised Program Officer must provide a report on the implementation of the treatment plan to the Senior Practitioner every six months.

A change cannot be made to a treatment plan unless approved by the Senior Practitioner. However, the Senior Practitioner cannot approve a change to a treatment plan that relates to an increase in supervision or restriction, except in an emergency.

Only VCAT can approve a variation in a treatment plan that leads to an increase in supervision or restriction. If the Senior Practitioner approves a change in an emergency, the Senior Practitioner must immediately apply to VCAT for a variation of the treatment plan.

Review of treatment plan – sections 154–155

Within six months of a person being admitted to a residential treatment facility, and then at intervals of not more than 12 months while a person is residing in a residential treatment facility, their treatment plan must be reviewed by VCAT.

The Act also provides that the person subject to the treatment plan or the Authorised Program Officer may at any time apply to VCAT for a review of the treatment plan.

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3. Requirements for people subject to custodial supervision orders are outlined in the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

4. “Benefit to the person” is defined in section 3 as ‘maximising a person’s quality of life and increasing their opportunity for social participation’.

5. Except for people on custodial supervision orders and people transferred from prison (refer section 166 page 55) where different procedures apply.
In conducting a review of a treatment plan, VCAT can:

- confirm the treatment plan
- vary the treatment plan
- require the Authorised Program Officer to prepare a new treatment plan.

VCAT must not confirm or vary a treatment plan unless VCAT is satisfied that the residential treatment facility can implement the treatment plan.

**Administrative procedures – sections 156–161**

The Act provides for a number of administrative procedures regarding people subject to compulsory treatment in a residential treatment facility. These provisions include:

- special leave of absence and special leave
- suspension of leave under specific circumstances
- security conditions
- transfer of a person to another residential treatment facility or residential institution
- apprehension of a person absent without leave.

**Provisions applying to residents subject to residential treatment orders – sections 162–165**

These sections of the Act outline specific provisions applying to people subject to a residential treatment order. These provisions outline a process for the person to have extended leave from the residential treatment facility under certain circumstances. These provisions are in line with the extended leave provisions for people subject to custodial supervision orders under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

**Provisions applying to security residents – sections 166–179**

A security resident is a person with an intellectual disability who is transferred from a prison to a residential treatment facility or residential institution.

The *Intellectually Disabled Persons’ Services Act 1986* currently contains provisions for the transfer of prisoners to a residential institution. Although there have been no prisoners transferred to a residential institution for over ten years, these provisions have been maintained and updated in the new Act.

These sections of the Act outline the administrative procedures between the Department of Justice and the Department of Human Services for the transfer of a prisoner. The Act specifies a requirement for a treatment plan to be developed and criteria that need to be met for the transfer of the person.

The Act provides that security residents must be reviewed by VCAT at least every 12 months. VCAT reviews the appropriateness of both the security order and treatment plan of the security resident.
VCAT is able to confirm the treatment plan, vary the treatment plan, ask for a new treatment plan to be developed, and make a recommendation that the security order is terminated.

The Act also outlines administrative procedures in relation to security residents, including:

- requirements for special leave of absence and special leave
- termination of a security order
- security conditions
- transfer to another residential treatment facility or residential institution
- apprehension of a person absent without leave.

**Provision applying to forensic residents – sections 180–182**

The Act outlines provisions regarding transfer of a person with an intellectual disability who is held in a prison on a custodial supervision order or on remand under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, to a residential treatment facility. These provisions are in line with those currently contained in the *Intellectually Disabled Persons’ Services Act 1986*.

The Act outlines the administrative procedures between the Department of Justice and the Department of Human Services for the transfer of a prisoner. It specifies a requirement for a treatment plan to be developed and criteria that need to be met for the transfer of the person.

**Civil**

**Supervised treatment orders – sections 183–201**

These sections provide for a civil order to enable people with an intellectual disability who pose a significant risk of serious harm to others to be detained.

A disability service provider must not detain a person with an intellectual disability other than in accordance with these sections of the Act.

Disability service providers must apply to the Secretary for approval to use supervised treatment. Only approved providers can use supervised treatment.

The application for approval must include specified details, including who will be the Authorised Program Officer for the disability service provider. The Authorised Program Officer is responsible for ensuring that any supervised treatment used by the disability service provider is administered in accordance with the Act.

If the Secretary is the disability service provider, the Secretary must ensure an Authorised Program Officer is appointed.
Section 191 specifies that the Authorised Program Officer of a residential service may apply to VCAT for a supervised treatment order for a person who:

• has an intellectual disability
• is receiving residential services

and

• has a treatment plan that has been approved by the Senior Practitioner.

The Senior Practitioner may direct an Authorised Program Officer to make an application to VCAT in certain circumstances.

VCAT can only make a supervised treatment order when specific criteria are met, including:

• that the person has previously exhibited a pattern of violent or dangerous behaviour causing serious harm to another person or exposing another person to a significant risk of serious harm
• using less restrictive means cannot reduce the significant risk of serious harm the person poses to others
• it is necessary to restrict the person’s liberty or freedom of movement to ensure compliance with a treatment plan or reduce the risk the person poses to others
• that the person would not otherwise comply with treatment.

A treatment plan for the person must be provided to VCAT when an application is made. The treatment plan must specify information including:

• the treatment that will be provided to the person
• the expected benefit to the person of the treatment

6 ‘Benefit to the person’ is defined in section 3 as ‘maximising a person’s quality of life and increasing their opportunity for social participation.’

• any restrictive interventions that will be used
• the level of supervision that will be required to ensure the person participates in treatment
• a process for the person to progress to lower levels of supervision.

VCAT may make an interim supervised treatment order at the time the application is made for a supervised treatment order. The interim order has effect until the application for a supervised treatment order is determined.
Following supervised treatment order being made – sections 193–199

A supervised treatment order is for a maximum of 12 months. There is no limit to the number of orders that can be sought for a person.

A supervised treatment order can specify conditions to which the person is subject and intervals at which the order is to be reviewed.

The Authorised Program Officer is responsible for the implementation of the supervised treatment order. The Authorised Program Officer must provide a report to the Senior Practitioner on the implementation of the supervised treatment order at a minimum of every six months.

The Senior Practitioner is responsible for supervising the implementation of the order. A change cannot be made to a treatment plan unless approved by the Senior Practitioner. However, the Senior Practitioner cannot approve a change to a treatment plan that relates to an increase in supervision or restriction, except in an emergency.

Only VCAT can approve a variation in a treatment plan, which leads to an increase in supervision or restriction. If the Senior Practitioner approves a change in an emergency, the Senior Practitioner must immediately apply to VCAT for a variation of the treatment plan.

A supervised treatment order can be returned to VCAT for review, variation or revocation. The administrative processes that apply to VCAT are also outlined in these sections.

These sections also provide that the Public Advocate may make an application to VCAT for an order directing the Authorised Program Officer to make an application for a supervised treatment order. This would occur where an Authorised Program Officer has not made an application and the Public Advocate believes a person is being detained to prevent a significant risk of serious harm to others.

Senior Practitioner may make an assessment order – section 199

An Authorised Program Officer may apply to the Senior Practitioner for an assessment order to enable a treatment plan to be developed.

The Senior Practitioner may only make an assessment order if:

• the person has an intellectual disability
• the person is receiving residential services
• it is necessary to detain the person to prevent a significant and imminent risk of serious harm to another person

and

• an assessment needs to be undertaken to enable the urgent development of a treatment plan for the purpose of making an application for a supervised treatment order.
An assessment order is for a maximum of 28 days and cannot be extended or renewed. On expiry of the order, the Authorised Program Officer must make an application to VCAT or cease detaining the person.

Only one application can be made for an assessment order for a person.

Amendments to the *Sentencing Act 1991*—sections 226–230

The Act makes consequential amendments to the *Sentencing Act 1991* to provide for a new criminal order, a residential treatment order. The amendments are made to sections 80–83 of the Sentencing Act, which provide special conditions for offenders with an intellectual disability.

The amendments enable the Secretary to provide an option of treatment in a residential treatment facility, where a person is suitable for admission to such a facility, there are services available for the person, and the person has committed a serious offence. In this circumstance, a court can make a residential treatment order for a maximum of five years.

The current provisions regarding justice plans have not been altered, except for a minor amendment which allows the Secretary to return a justice plan to court for review if a person is not complying with the plan or the person’s needs are no longer being met by the plan. The Secretary can currently only seek a review of a justice plan by a court if it is no longer appropriate.

Key points for disability service providers:

- A Senior Practitioner will be appointed to ensure that the rights of people subject to restrictive interventions or compulsory treatment are protected and that appropriate standards in relation to these practices are met.
- The Senior Practitioner will ensure that disability service providers are both more accountable in relation to restrictive interventions and compulsory treatment and have increased access to specialist expertise, information and advice.
- Disability service providers must apply to the Secretary for approval to use restrictive interventions or supervised treatment.
- The application must include the name and position of the person who will be the Authorised Program Officer.
- Restraint or seclusion cannot be used unless specific criteria are met and the use of restraint or seclusion is included in a behaviour management plan (except in an emergency).
- An independent person must explain to the person with a disability the use of restraint or seclusion in the behaviour management plan and the person’s right to seek a review of the decision by VCAT.
• The inclusion of the use of restraint or seclusion in a behaviour management plan must be approved by the Authorised Program Officer and notified to the Senior Practitioner.

• The Senior Practitioner monitors the use of restraint and seclusion, and may monitor or set guidelines regarding the use of other restrictive interventions.

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

• Residential treatment facilities may be proclaimed to provide compulsory treatment for people with an appropriate criminal order.

• In relation to residential treatment facilities, the Act outlines admission criteria, the requirement for a treatment plan, leave provisions, review of the treatment plan by VCAT and a range of other processes for people who are subject to this form of compulsory treatment.

• The Act creates a new civil order, a supervised treatment order.

• This order applies where a person has an intellectual disability, is residing in a residential service, and poses a significant risk of serious harm to others.

• Following approval by the Senior Practitioner, an application may be made by the Authorised Program Officer to VCAT for a supervised treatment order when the criteria outlined in the Act are met.

• The Act outlines requirements for people subject to supervised treatment, including the development of treatment plans, monitoring by the Senior Practitioner, review by VCAT and a range of other processes.

• The Act makes consequential amendments to the Sentencing Act 1991 to create a new order, a residential treatment order, which provides for up to five years treatment in a residential treatment facility.
Administrative provisions – sections 202–250

Sections 202–250 of the Act outline primarily administrative provisions which include:

• the power of the Secretary to delegate certain functions and powers to departmental officers

• that the Governor-in-Council may make regulations in relation to certain matters under the legislation, including prescribing forms, fees, matters to be included in a residential statement and the maximum amount for residential charges

• the repeal of the current disability legislation – the *Intellectually Disabled Persons’ Services Act 1986* and the *Disability Services Act 1991*

• transitional provisions for the move from the current legislation to the new legislation

• amendments to the *Sentencing Act 1991* to enable a court to make a residential treatment order for a person with an intellectual disability

• amendments to the *Victorian Civil and Administrative Tribunal Act 1998* in relation to hearings under the new legislation

• consequential amendments to other Acts to reflect the repeal of the current disability legislation.

• offences under the Act

• special powers of the Secretary.

Special powers of the Secretary – Authorised Officers – sections 206–213

The Act contains similar provisions for the special powers of the Secretary to those contained in the *Intellectually Disabled Persons’ Services Act 1986*. The special powers of the Secretary under the *Intellectually Disabled Persons’ Services Act 1986* relate primarily to inspection powers. The government’s requirements in relation to inspection powers have changed since the proclamation of the *Intellectually Disabled Persons’ Services Act 1986*.

The Act has updated the inspection powers of the Secretary in line with the Government’s response to the Victorian Law Reform Commission’s *Final report on the powers of entry, search, seizure and questioning by authorised persons*. The Act contains powers of entry, search, inspection and questioning with appropriate protections. It is anticipated that these powers will only be used in very limited circumstances.
Appendix 1 Definitions – section 3

Section 3 assists in understanding the Act as it includes definitions of key terms used in the Act.

Section 3 states:

In this Act—

“authorised officer” means a person appointed as an authorised officer under section 207;

“Authorised Program Officer” means a person appointed under section 139 or 190;

“behaviour management plan” means a plan developed for a person with a disability which specifies a range of strategies to be used in managing the person’s behaviour including proactive strategies to build on the person’s strengths and increase their life skills;

“benefit to the person” means maximising a person’s quality of life and increasing their opportunity for social participation;

“chemical restraint” means the use, for the primary purpose of the behavioural control of a person with a disability, of a chemical substance to control or subdue the person but does not include the use of a drug prescribed by a registered medical practitioner for the treatment, or to enable the treatment, of a mental illness or a physical illness or physical condition;

“common area” means any area in which facilities are provided for the use of residents otherwise than as part of the room which the resident occupies;

“community residential unit” means a residential service which is declared to be a community residential unit under section 64;

“community visitor” means a person appointed under section 28;

“Community Visitors Board” means the Board established under section 32;

“complaint”, in Division 5 of Part 6, means a complaint within the meaning of section 109;

“compulsory treatment” means treatment of a person who is—

(a) admitted to a residential treatment facility or a residential institution under an order specified in section 152(2); or

(b) subject to a supervised treatment order;

“Department” means the Department of Human Services;

“detain”, in Part 8, includes—

(a) physically locking a person in any premises; and

(b) constantly supervising or escorting a person to prevent the person from exercising freedom of movement;
“developmental delay” means a delay in the development of a child under the age of 6 years which—
(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
(b) is manifested before the child attains the age of 6 years; and
(c) results in substantial functional limitations in one or more of the following areas of major life activity—
(i) self-care;
(ii) receptive and expressive language;
(iii) cognitive development;
(iv) motor development; and
(d) reflects the child’s need for a combination and sequence of special interdisciplinary, or generic care, treatment or other services which are of extended duration and are individually planned and coordinated;

“disability” in relation to a person means—
(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;

“disability service” means a service specifically for the support of persons with a disability which is provided by a disability service provider;

“disability service provider” means—
(a) the Secretary; or
(b) a person or body registered on the register of disability service providers;

“Disability Services Commissioner” means the Disability Services Commissioner appointed under section 14 and includes the Acting Disability Services Commissioner appointed under section 15;

“Disability Services Board” means the Disability Services Board established under section 20;
“facilities” means—
(a) land or buildings intended for use for storage space or car parking;
(b) laundry facilities;
(c) cooking facilities;
(d) recreational areas;
(e) garbage storage and disposal facilities;
(f) bathroom, toilet and washing facilities;
(g) appliances for heating or cooling premises;
(h) communications facilities;
(i) lawns, gardens and outhouses;
(j) stairways—provided for the use of a resident otherwise than as a part of the room;

“forensic resident” has the same meaning as it has in section 3(1) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997;

“intellectual disability”, in relation to a person over the age of 5 years, means the concurrent existence of—
(a) significant sub-average general intellectual functioning; and
(b) significant deficits in adaptive behaviour—each of which became manifest before the age of 18 years;

“leave of absence” means temporary leave from a residential treatment facility under section 156 or from a residential institution under section 170 given to a resident in accordance with the resident’s treatment plan;

“mechanical restraint” means the use, for the primary purpose of the behavioural control of a person with a disability, of devices to prevent, restrict or subdue a person’s movement but does not include the use of devices—
(a) for therapeutic purposes; or
(b) to enable the safe transportation of the person;

“Minister” means the Minister for Community Services;

“notice of intention to vacate” means a notice given under section 80;

“notice of temporary relocation” means a notice given under section 74;

“notice to vacate” means a notice given under section 76;

“person” includes a body or association (corporate or unincorporate) and a partnership;
“premises” means a structure that is designed to be used for human habitation and the area outside that structure which is part of the property on which the premises is located and includes—
(a) the room occupied or to be occupied by a resident;
(b) any common area;
(c) any facilities;

“prison” has the same meaning as in the Corrections Act 1986;

“Public Advocate” means the Public Advocate appointed under section 12 of the Guardianship and Administration Act 1986;

“region” has the same meaning as in the Health Services Act 1988;

“register of disability service providers” means the register of disability service providers kept under section 46;

“rent component” means an amount for the use by a resident of the room, any common area and the premises;

“resident” means a person who receives disability services in a residential service;

“resident’s administrator” means the resident’s attorney appointed under an enduring power of attorney to administer the resident’s property or a person appointed by a court or tribunal as the administrator of the resident’s property;

“resident’s guardian” means the resident’s guardian appointed under the Guardianship and Administration Act 1986 or appointed by a court and if the resident is a child, includes the child’s guardian whether or not the natural parent of the child;

“residential charge” means a charge comprising the rent component or both the rent component and the services component;

“residential institution” means any premises which is proclaimed to be, or deemed to be, a residential institution under section 86;

“residential service” means residential accommodation with rostered staff provided by, or on behalf of, a disability service provider for the purpose of providing disability services to—
(a) one or more residents in a community residential unit; or
(b) one or more residents in a residential service other than a community residential unit;

“residential treatment facility” means a premises or program proclaimed to be a residential treatment facility under section 151;

“residential treatment order” has the same meaning as it has in section 3(1) of the Sentencing Act 1991;
“Residents’ Trust Fund” means the Residents’ Trust Fund continued under section 91;
“RTO resident” means a person who is subject to a residential treatment order;
“restraint” means chemical restraint or mechanical restraint;
“restrictive intervention” means any intervention that is used to restrict the rights or freedom of movement of a person with a disability including—
(a) chemical restraint;
(b) mechanical restraint;
(c) seclusion;
“room” means a room in a premises where the room is occupied or intended to be occupied by a person who has a right to occupy the room for the purpose of a residence together with a right to use in common with others common areas in the premises;
“seclusion” means the sole confinement of a person with a disability at any hour of the day or night—
(a) in any room in the premises where disability services are being provided of which the doors and windows cannot be opened by the person from the inside; or
(b) in any room in the premises where disability services are being provided of which the doors and windows are locked from the outside; or
(c) to a part of any premises in which disability services are being provided;
“Secretary” means the Secretary to the Department;
“security order” means a security order made under section 166;
“security resident” means a person in respect of whom a security order is in force;
“Senior Practitioner” means the person appointed as the Senior Practitioner under section 23;
“services component” means an amount for whichever of the following service items are provided to a resident—
(a) utilities;
(b) communications including telephone;
(c) bedding and linen;
(d) food;
(e) general household consumable supplies;
(f) communal furnishings and whitegoods;
(g) household equipment and utensils;
(h) replacement of items specified in sub-paragraphs (b), (c), (e), (f), or (g) following wear and tear or accidental damage;
“special leave” means leave from a residential treatment facility under section 157 or from a residential institution under section 171;

“supervised treatment” means treatment used on a person with an intellectual disability under a supervised treatment order;

“supervised treatment order” means a civil order made in respect of a person with an intellectual disability under section 191;

“support plan” means a support plan prepared under section 54 for a person with a disability who is receiving on-going disability services;

“treatment plan” means a plan for the use of treatment on a person with a disability prepared under section 153, 167, 180(6) or 191;

“urgent repairs” means any work necessary to repair or remedy—

(a) a burst water service; or
(b) a blocked or broken lavatory system; or
(c) a serious roof leak; or
(d) a gas leak; or
(e) a dangerous electrical fault; or
(f) flooding or serious flood damage; or
(g) serious storm or fire damage; or
(h) a failure or breakdown of any essential service or appliance provided by a disability service provider for hot water, water, cooking, heating or laundering; or
(i) a failure or breakdown of the gas, electricity or water supply to a residential service; or
(j) an appliance, fitting or fixture provided by a disability service provider that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wasted; or
(k) any fault or damage that makes a room or residential service unsafe or insecure; or
(l) a serious fault in a staircase; or
(m) any damage of a prescribed class;

“Victorian Disability Advisory Council” means the Council established under section 11.
Appendix 2 Key points for disability service providers

Key points for disability service providers:

**General provisions**
- The objectives and principles provide the framework for administering and implementing the Act.
- The Act provides principles in relation to people with a disability and the provision of disability services.
- The Act contains specific principles and provisions in relation to people with an intellectual disability.
- Disability service providers must provide information required under the Act to service users in the language and form of communication that the person is most likely to understand.
- Where reasonable, information must be provided both orally and in writing.
- It is an offence for a disability service provider to disclose information about a person with a disability that has been obtained through the provision of a disability service or appointment under the Act.
- The Act outlines some exemptions where a disability service provider can disclose information.
- When a person starts to use a disability service, a disability service provider must provide them with information relevant to the services being provided.

**Government leading change**
- The Secretary has a range of functions and powers that relate to both the provision of disability services and the participation and inclusion of people with a disability in the community.
- The Act prescribes the establishment of the Victorian Disability Advisory Council, its functions and membership.
- The current State Disability Plan 2002–2012 will continue to have effect until a new plan is required in January 2013.
- The Act strengthens the government’s commitment to the development of disability action plans and provides a clear mechanism to keep public services accountable to the community.

**Streamlined access**
- The Act maintains the current target group for access to disability services.
- The Act changes the way people access disability services by providing for a streamlined system that is not based on disability type.
- A person with a disability, or a person on their behalf, may request services from a disability service provider. This reflects, to some extent, the current practice for individuals with a disability (other than an intellectual disability).
A disability service provider may accept a request, or refuse a request, which may be for a range of reasons.

If the reason for refusing the request is because the disability service provider believes that the person does not have a disability, the person has a right to have the Secretary make a decision regarding whether they have a disability.

If the Secretary decides that the person does not have a disability, the person may seek a review by VCAT.

A decision by the Secretary that a person has a disability does not of itself entitle a person to services under the Act.

Planning for individuals

The guiding principles for planning establish a framework for planning under sections 52–55 of the Act.

Planning in the Act encompasses a range of responses, from brief discussion and agreement to extensive processes and the development of a comprehensive plan.

A person with a disability, or a person on their behalf, may request that a disability service provider provide them with assistance with planning.

A disability service provider may directly provide or arrange for this assistance to be provided.

A support plan must be developed for people who are receiving ongoing disability services.

A support plan must be reviewed once every three years as a minimum requirement.

People with an intellectual disability who request a service must be offered assistance with planning.

There are transitional provisions to ensure that existing plans can continue at the time of commencement of the Act.

When existing plans are reviewed or cease, the new planning provisions will take effect.

Strengthening rights in residential services

The Act creates rights for people residing in residential services and obligations on disability service providers who provide residential services.

Disability service providers must provide residents with a residential statement when they commence residing at a residential service.

The Act outlines duties for disability service providers, including to ensure that there is a reasonable balance between the rights of residents and the safety of all residents in the residential service.
• The Act outlines duties for residents.
• The Act also outlines specific requirements in relation to room entry, with which disability service providers must comply.
• A residential service may be declared by the Minister to be a community residential unit.
• The Act outlines additional requirements for community residential units, particularly in relation to residential charges and relocation of residents.
• A number of these requirements are reviewable by VCAT.
• A residential service may be proclaimed as a residential institution.
• The criteria for admission to a residential institution is outlined in the Act and a decision to admit a person to a residential institution is reviewable by VCAT.
• It an offence for a disability service provider to act as a financial administrator for a person with a disability to whom they are providing services, although a residential service may manage a specified amount of money for a resident under certain conditions.
• The provisions regarding the Resident’s Trust Fund in the *Intellectually Disabled Persons Services Act 1986* have been carried over to the Act.

**Building strong complaint and review systems**

• Disability service providers must develop and operate an internal process for managing complaints about the services that they provide.
• Disability service providers must ensure that people using their service know how a complaint can be made about the service provided.
• Disability service providers must report annually to the Disability Services Commissioner about the number of complaints they receive and how these complaints were dealt with.
• The Act allows for the appointment of a Disability Services Commissioner to conciliate and investigate complaints in relation to disability services.
• The Disability Services Commissioner has broad and flexible discretion to entertain complaints across a wide spectrum.
• The Disability Services Commissioner will report to Parliament annually.
• The Act establishes a Disability Services Board to provide advice to the Disability Services Commissioner and oversee the disability complaints system.
• The Act provides for a range of decisions to be made or reviewed by VCAT.

**Supporting high quality services**

• The Secretary may provide registration as a disability service provider, if a service provider can provide a service to people with a disability in accordance with the requirements of the Act.
Disability Act 2006
A guide for disability service providers

- The Secretary must keep and make available to the public for inspection a register of disability service providers.
- A disability service provider may apply to VCAT for review of a refusal or revocation of registration by the Secretary.
- The Minister must determine standards to be met by disability service providers when providing disability services under the Act.
- The Secretary must specify performance measures in relation to the standards and may monitor the compliance of disability service providers with the performance measures.
- The Secretary may give directions if it is considered that a disability service provider has breached or not complied with the relevant performance measure or the conditions of their contract or any requirement in the Act.
- If directions are not complied with, the Secretary may take action to stop payment, terminate the contract or remove the committee of management.
- The power to appoint an administrator has been retained from the Intellectually Disabled Persons’ Services Act 1986.
- The Minister may recommend to the Governor-in-Council that an administrator be appointed to a disability service under certain circumstances.
- The Act provides for the appointment and functions of community visitors. These provisions have been strengthened and updated from the current legislation.
- Community visitors are able to inspect and make inquiries in relation to residential services.

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

- A Senior Practitioner will be appointed to ensure that the rights of people subject to restrictive interventions or compulsory treatment are protected and that appropriate standards in relation to these practices are met.
- The Senior Practitioner will ensure that disability service providers are both more accountable in relation to restrictive interventions and compulsory treatment and have increased access to specialist expertise, information and advice.
- Disability service providers must apply to the Secretary for approval to use restrictive interventions or supervised treatment.
- The application must include the name and position of the person who will be the Authorised Program Officer.
- Restraint or seclusion cannot be used unless specific criteria are met and the use of restraint or seclusion is included in a behaviour management plan (except in an emergency).
• An independent person must explain to the person with a disability the use of restraint or seclusion in the behaviour management plan and the person’s right to seek a review of the decision by VCAT.

• The inclusion of the use of restraint or seclusion in a behaviour management plan must be approved by the Authorised Program Officer and notified to the Senior Practitioner.

• The Senior Practitioner monitors the use of restraint and seclusion, and may monitor or set guidelines regarding the use of other restrictive interventions.

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

• Residential treatment facilities may be proclaimed to provide compulsory treatment for people with an appropriate criminal order.

• In relation to residential treatment facilities, the Act outlines admission criteria, the requirement for a treatment plan, leave provisions, review of the treatment plan by VCAT and a range of other processes for people who are subject to this form of compulsory treatment.

• The Act creates a new civil order, a supervised treatment order.

• This order applies where a person has an intellectual disability, is residing in a residential service, and poses a significant risk of serious harm to others.

• Following approval by the Senior Practitioner, an application may be made by the Authorised Program Officer to VCAT for a supervised treatment order when the criteria outlined in the Act are met.

• The Act outlines requirements for people subject to supervised treatment, including the development of treatment plans, monitoring by the Senior Practitioner, review by VCAT and a range of other processes.

• The Act makes consequential amendments to the Sentencing Act 1991 to create a new order, a residential treatment order which provides for up to five years treatment in a residential treatment facility.
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