

# **Community Visitors Protocol**

**Between the  
Office of the Public Advocate – Community  
Visitors (Disability Services) Program**

**And**

**Department of Human Services – Disability  
Services Division**

**And**

**National Disability Services (Vic)**

**28 November 2007**

## **1 Preamble**

This Protocol has been developed by and for the Department of Human Services (DHS) Disability Services Division, the Office of the Public Advocate (OPA) Community Visitors Program (CVP) and National Disability Services Victoria (NDS). A DHS-CVP Protocol was first developed in 2001 to coincide with the expansion of Community Visitors' responsibilities to visit residential services provided by community service organisations. The impetus for this revision is the implementation of the *Disability Act 2006* on 1 July 2007 and the inclusion of NDS as a signatory.

## 2 Introduction

This protocol is designed to establish a common understanding between the parties to the protocol, that is, the Department of Human Services (DHS), National Disability Services Victoria (NDS) as the peak organisation representing registered disability service providers managing residential services and the Community Visitors Program (CVP). Residential services are managed either by the department or by community service organisations (CSO). The protocol outlines the roles and responsibilities of Community Visitors and the responsibilities of disability service provider direct care residential staff and managers in relation to visits by Community Visitors.

A guiding principle of this protocol is that all parties, Community Visitors, Regional Convenors, Community Visitor CVP Unit Coordinators, disability residential services staff and DHS and CSO managers will conduct their interactions with each other in a respectful way at all times.

The parties to this agreement commit their respective organisations to honour this agreement with the common objective of achieving improved service quality and better outcomes for people living in disability residential services.

**This Protocol was executed on 28 November 2007**

**by**

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## Contents

1	Preamble.....	2
2	Introduction.....	3
3	Background and Context .....	6
3.1	Key Terms: .....	6
3.2	The Functions of a Community Visitor .....	8
3.3	Visits to Residential Service Premises.....	8
3.4	Residents Requesting a Visit .....	8
3.5	Access to Residents' Records and Other Related Documentation.	9
3.6	Secrecy Requirements .....	10
3.7	Reporting Requirements.....	10
4	Protocol .....	11
4.1	Protocol for Visits .....	11
4.1.1	Responsibilities of Community Visitors during a visit.....	11
4.1.2	Responsibilities of residential staff on duty during a visit .....	12
4.2	Protocol for resolving issues after the visit .....	13
4.2.1	Responsibilities of Regional Convenors .....	13
4.2.2	Responsibilities of Disability Service Providers .....	13
4.2.3	Process for addressing unresolved issues.....	14
4.3	Resolving disputes in relation to this protocol and the visiting process.....	15
5	Future Commitments .....	15
5.1	Record of Community Visits .....	15
5.2	Notification of Resident Deaths.....	15
6	Glossary Of Terms .....	16
7	Organisational Charts.....	18
7.1	Disability Service Providers –Department of Human Services and Community Service Organisations .....	18
7.2	Community Visitors Program.....	18
8	Community Visitors Reporting Flowchart .....	19
9	Appendix 1: .....	20
	Objectives and Principles of the Disability Act (2006).....	20

## **3 Background and Context**

### **3.1 Key Terms:**

#### **Community Visitors**

Community Visitors are volunteers from a range of occupations and backgrounds and are appointed by the Governor-in-Council on the recommendation of the Public Advocate. Community Visitors visit residential service premises of disability service providers, as defined by the *Disability Act 2006*, to ensure that residents have the same rights and opportunities as any other member of the community.

#### **The Community Visitors Program (CVP)**

The Community Visitors Program is the framework in which Community Visitors are appointed under the *Disability Act 2006*. The legislative authority of Community Visitors is described by the *Disability Act 2006*.

**The Office of the Public Advocate** The Office of the Public Advocate is the office established under the *Guardianship and Administration Act 1986* as the office responsible for promoting and protecting the rights of people with a disability in Victoria. The Office of the Public Advocate (OPA) manages the Community Visitors Program (CVP). The Office of the Public Advocate sits within the Department of Justice, but is independent of government and reports to the Victorian Parliament.

#### **The Department of Human Services (DHS)**

The Department of Human Services (DHS) is Victoria's largest state government department. It covers the responsibilities of the Ministers for Health, Mental Health, Community Services and Housing. It plans, funds and delivers health, community and housing services. The DHS is the responsible government department for the provision of residential services under the *Disability Act 2006*.

#### **National Disability Services Victoria (NDS)**

National Disability Services (NDS) Victoria is the peak organisation that represents registered disability service providers in Victoria, including those that provide residential services under the *Disability Act 2006*.

#### **Register of Disability Service Providers**

The Register of Disability Service Providers is a public list of disability service providers that are registered and funded by DHS to provide services specifically for the support of people with a disability.

#### **Disability Service Provider**

Disability service provider refers to either disability services provided by the DHS or a person or body registered on the register of disability service providers.

#### **Community Service Organisation**

A Community Service Organisation (CSO) within the context of this protocol is defined as a non-government organisation that is registered on the register of disability service provider kept under *section 46 of the Disability Act 2006*.

#### **Disability Accommodation Services (DAS)**

Disability Accommodation Services (DAS) refers to the program area responsible for providing DHS managed residential services.

#### **The Minister**

Within the context of this protocol and as defined within the *Disability Act 2006* is the Minister for Community Services.

### **The Disability Act 2006**

The *Disability Act 2006* is the legislation that reaffirms and strengthens the rights and responsibilities of people with a disability. It provides the legislative structure and definition of the CVP for Disability Services, continued from earlier disability legislation. Specific Sections in the Act that refer to Community Visitors are sections 3, 28-36, 57, 129-132. DHS administers the *Disability Act 2006*.

### **Community Visitors Board**

The Community Visitors Board comprises the Public Advocate and two elected Community Visitors. Under *section 32 of the Disability Act 2006*, the Board's functions are to represent Community Visitors, supervise Community Visitor training, prepare and circulate publications explaining the role of Community Visitors, report matters to the Public Advocate or the Minister and to refer matters to the DHS Secretary, Disability Services Commissioner, the Senior Practitioner or the Ombudsman and prepare an annual report.

### **Regional Convenors**

At least one Community Visitor in each region is appointed as a Regional Convenor. Regional Convenors have overall responsibility for the activities of Community Visitors in their appointed region, in addition to undertaking normal Community Visitor duties.

***Further terms are defined in the Glossary of Terms in Section 6***

### **3.2 The Functions of a Community Visitor**

The functions of a Community Visitor are to visit any premises where a registered disability service provider is providing residential services in the region for which the Community Visitor is appointed and to inquire into:

- (a) the appropriateness and standard of premises for the accommodation of residents;
- (b) the adequacy of opportunities for inclusion and participation by residents in the community;
- (c) whether the residential services are being provided in accordance with the principles of the *Disability Act 2006* (Section 5);
- (d) whether information is being provided to residents as required by the *Disability Act 2006*;
- (e) any case of suspected abuse or neglect of a resident;
- (f) the use of restrictive interventions and compulsory treatment;
- (g) any failure to comply with the provisions of the *Disability Act 2006*;
- (h) any complaint made to a Community Visitor by a resident.

### **3.3 Visits to Residential Service Premises**

Community Visitors are entitled to visit any residential service premises managed by a disability service provider with or without any previous notice at the times and periods that the Community Visitor believes appropriate. This applies to both residential institutions and residential services provided in the community.

Community Visitors are empowered under *section 130 of the Disability Act 2006* to:

- inspect any part of the premises;
- see any resident;
- make enquiries relating to the provision of services;
- inspect any document relating to any resident which is not a medical record and records required to be kept under the Act;
- Community Visitors may inspect any medical record relating to a resident with the consent of the resident or the resident's guardian.

Where possible, residents should be advised when Community Visitors want consent to access personal documentation.

### **3.4 Residents Requesting a Visit**

Any resident in a residential service managed by a disability service provider or any person on behalf of the resident may request the disability service provider to arrange for the resident to be seen by a Community Visitor.

The *Disability Act 2006* requires that the disability service provider advise the Community Visitors Board of the request within 72 hours of receiving it.

The Community Visitors Board must respond within 7 days of receiving the request. If the Board considers it appropriate they may arrange for the Public Advocate to respond to the request.

To arrange a visit residential support staff should forward a request to OPA on telephone 1300 309 337

In some circumstances the Community Visitors Board may refuse a request if it considers the request vexatious, frivolous or lacking in substance. Where the Community Visitors Board rejects a request on this basis it will communicate its decision to the resident and/or their carer in the first instance and then to the nominated manager or person in charge of the residential facility as soon as practicable after the decision is made.

### 3.5 Access to Residents' Records and Other Related Documentation

- In accordance with the provisions of the *Disability Act 2006* (Section 130) and information privacy and health records legislation, Community Visitors are empowered to access information to fulfil the requirements of their role. Much of this information is of a personal or sensitive nature, and is therefore confidential and should be maintained in accordance with the legislative requirements.
- Information gained by Community Visitors will only be used for the purpose of carrying out their responsibilities under the *Disability Act 2006*. Community Visitors are entitled to inspect any document kept at residential premises of a registered disability service relating to any resident which is not a medical record, and any records required to be kept by or under the *Disability Act 2006*, as part of their enquiries. This includes personal files, individualised support plans, incident reports, and restrictive intervention and compulsory treatment reports.
- Community Visitors will only access personal information about a resident when it relates specifically to their inquiries. Access to personal information as part of the Community Visitor role will be exercised with sensitivity and the best interests of the resident will be regarded as paramount.
- Where possible Community Visitors will communicate their role and intent with residents before accessing their files.
- Community Visitors may inspect a medical record relating to a resident with the consent of the resident or the consent of a person with legal authority to make medical decisions for the person, such as a guardian with authority for health care decisions.
- Community Visitors will only access medical records if it assists with follow-up of a particular matter related to that person.
- If a person cannot provide consent and there is no legally appointed agent or guardian then the *person responsible* as defined by the *Guardianship and Administration Act 1986* (section 37) may provide consent.
- If there is no legally appointed agent or guardian the *person responsible* should be identified in the following order of priority as,
  - the person's spouse or domestic partner
  - the person's carer, including carers in receipt of a Centrelink Carer's payment **but excluding paid carers or service providers**
  - the person's nearest relative over the age of 18, which means (in order of preference):
    - son or daughter
    - father or mother
    - brother or sister (including adopted persons and 'step' relationships)
    - grandfather or grandmother
    - grandson or granddaughter
    - uncle or aunt
    - nephew or niece.
- A medical record is a record created by a treating medical practitioner for a medical purpose, that is, for the medical assessment, diagnosis and treatment of a person.
- Information recorded about a person does not become a medical record simply because it contains information within it about medication or medical appointments.
- Community Visitors may, without consent from the resident or the consent of a person with legal authority to make medical decisions, see records where chemical or mechanical restraint is used, because chemical restraint is provided for the purpose of managing behaviour, and not for medical treatment.

### **3.6 Secrecy Requirements**

All Community Visitors are bound by the secrecy provision of section 36 of the *Disability Act 2006* and, as such, any information gained by Community Visitors will only be used for the purpose of performing any official duties and carrying out their responsibilities under the *Disability Act 2006*.

Section 36 (2) of the *Disability Act 2006* also provides exceptions to the secrecy provision so that Community Visitors are not prevented from producing a document to a court or in the course of criminal proceedings or any proceedings under the *Disability Act 2006*; or divulging or communicating information where a person has consented in writing to the disclosure of information relating to their personal affairs.

### **3.7 Reporting Requirements**

Pursuant to sections 34 and 35 of the *Disability Act 2006*, Community Visitors must submit a report at least twice a year to the Community Visitors Board regarding visits made since the previous report. Community Visitors may also submit a report to the Community Visitors Board at any time regarding any recommendations the Community Visitor considers should be considered by the Community Visitors Board.

The Community Visitors Board must, prior to 30 September, submit a report to the Minister relating to the activities of Community Visitors during the preceding financial year.

After receiving the Annual Report, the Minister must then lay it before the Legislative Council and the Legislative Assembly within 14 sitting days of the Council or Assembly as prescribed in Section 35 (2) of the *Disability Act 2006*.

## 4 Protocol

### 4.1 Protocol for Visits

One of the functions of Community Visitors is to inquire whether residential services are being provided in accordance with the principles of the *Disability Act 2006* (Section 5), refer to Appendix 1.

Community Visitors are required by the *Disability Act 2006* to visit each residential institution at least once every month. In addition to the requirements of the *Disability Act 2006*, Community Visitors undertake to visit all other residential service premises managed by a disability service provider at least twice a year.

Residents should be involved in the process of Community Visitors' visits as much as possible, giving due regard to their abilities and wishes to participate. It should be noted that maintaining and promoting the rights of people with a disability in disability residential services provides the basis of this protocol. This includes respect for the dignity, confidentiality and privacy of all residents.

Community Visitors usually visit in panels of two or three people. The Panel Secretary is responsible for coordinating visits and completing the Record of Visit.

#### 4.1.1 Responsibilities of Community Visitors during a visit

When visiting a residential service premises, Community Visitors will:

- Produce identification and explain the role of Community Visitors and purpose of the visit to residents and staff.
- Respect the rights of residents if they indicate that they do not wish to discuss anything with the Community Visitor.
- Meet their responsibilities for visiting as required by the *Disability Act 2006* and set out in this Protocol under, "the functions of a Community Visitor" (page 8).
- Ensure that sufficient information, about the CVP, is provided and available at the residential service premises.
- Complete a Record of Visit that outlines general comments based on the observations, discussions and inspections of the visit using the prescribed form in the *Disability Act 2006*. Community Visitors and the most senior staff member present must sign this form, and a copy left at the residential service premises.
- List any issues of concern that arise during the visit in the Issues Report, as an attachment to the Record of Visit. This may be done during the visit and left at the residential premises visited, or submitted within seven days of the visit to either the person in charge of the residential service premises visited or to the responsible nominated service manager.
- Follow up any outstanding issues from previous visits and record in the appropriate section of the Record of Visit.
- Send a copy of all reports arising from the visit to the responsible Regional Convenor.

#### **4.1.2 Responsibilities of residential staff on duty during a visit**

When Community Visitors visit a residential service premises, staff will:

- Request that the Community Visitors produce identification when they arrive at the service. If the Community Visitors fail to produce identification, access to the premises should be denied.
- Introduce the Community Visitors to residents and explain their role and when necessary, make available information about the CVP as provided by Community Visitors.
- Provide the Community Visitors with reasonable assistance to carry out their responsibilities effectively during the visit.
- Inform residents and respect their right to speak confidentially to the Community Visitors if they choose.
- Give full and true answers to the best of their knowledge to questions asked by a Community Visitor, in relation to their responsibilities under the *Disability Act 2006*. Where a staff member is unable to answer a question asked by a Community Visitor, the required information should be provided to the Community Visitor as soon as possible.
- Read and sign the Record of Visit completed by Community Visitors. Signing of the report indicates that they have noted the contents; it does not mean endorsement or agreement. A copy of the Record of Visit is to be kept at the residential service premises.
- Ensure that a copy of the completed Record of Visit, including any Issues Reports, is provided to the nominated service manager.
- Section 132 of the Disability Act requires disability service providers to keep a copy of the Record of Visit at the residential service premises.

## **4.2 Protocol for resolving issues after the visit**

Community Visitors provide an Issues Report as an attachment to the Record of Visit, as part of their role and function defined under the *Disability Act 2006*. The following information outlines the processes and responsibilities of each party to resolve the issues raised in these reports.

### **4.2.1 Responsibilities of Regional Convenors**

The Regional Convenor is responsible for receiving all Records of Visits from Community Visitors in their region. The Regional Convenor ensures that all issues raised and responses from disability service providers are recorded and that progress with the resolution of each issue is monitored and reported to the Community Visitors Board twice a year as required by the *Disability Act 2006* (section 34).

For each reporting year this record by Regional Convenors will form the basis of the Community Visitors Board Annual Report that is required by the *Disability Act 2006* (section 35) to be provided to the Minister prior to 30 September each year.

The Regional Convenor is responsible for arranging and attending regular liaison meetings or, for urgent matters, requesting special meetings to discuss issues identified through the quarter, any resolution of issues reached, unresolved issues or any other information of significance:

- For CSO managed services, Regional Convenors will meet regularly, or on a needs basis, with the nominated service manager.
- For DHS managed services it is expected that Regional Convenors will meet at least quarterly with regional DAS management

Regional Convenors will also meet regularly, or as needed, with the regional manager of DHS Disability Partnerships and Service Planning.

The Regional Convenor will notify the CVP Unit Coordinator of any urgent matters, emerging trends or long-term outstanding issues arising from visits.

### **4.2.2 Responsibilities of Disability Service Providers**

The nominated service manager is responsible for ensuring that processes are in place so that, pursuant to Section 132 of the *Disability Act 2006*, a copy of the Record of Visit is kept at the residential service premises.

The nominated service manager is responsible for responding in writing to the Regional Convenor in a timely manner, appropriate to the seriousness of issues raised by Community Visitors. The nominated service manager will provide a summary status report at least quarterly or as negotiated with the CVP.

Critical information to be included in response to issues are:

- reference number for Record of Visit;
- the residential address;
- date of visit;
- a list of all issues raised;
- the response to each issue;
- any resolution achieved; and
- the name of the person responding.

For DHS managed services it is expected that the regional DAS management will meet at least quarterly with Regional Convenors to discuss issues identified through the quarter, any resolution of issues reached, unresolved issues or any other information of significance.

For CSOs it is expected that the nominated service manager will meet regularly with Regional Convenors, or on a needs basis, to discuss issues identified through visits, any resolution of issues reached, unresolved issues or any other information of significance.

#### **4.2.3 Process for addressing unresolved issues**

- Every effort should be made to resolve issues at the most local level possible.
- When issues are identified from a visit, the Regional Convenor will raise the matter with the appropriate senior staff member nominated by the service at a regular liaison meeting or urgent meeting. If the matter can be satisfactorily resolved then the resolution will be documented and no further action will be taken.
- The Regional Convenor and/or CVP Unit Coordinator can refer to DHS senior management in the region, as appropriate, matters or issues of concern that have not been resolved satisfactorily.
- The CVP will notify the disability service provider if issues are to be raised with DHS senior management or others.
- Following this, for serious unresolved issues, it may be necessary for the CVP Unit Coordinator to refer the matter to the CVP Manager and/or the Community Visitors Board.
- Where serious allegations are involved, the CVP will refer the matter to the appropriate authorities immediately. Where possible and appropriate, the disability service provider will be notified. This includes any issue that places the physical or psychological health or well-being of a resident(s) at risk.
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- Section 33 of the *Disability Act 2006* permits that without limiting the discretion of the Community Visitors Board to refer a matter to be dealt with by any other person, they may refer a matter reported by a Community Visitor to;
  - a) the Secretary
  - b) the Disability Services Commissioner
  - c) the Senior Practitioner
  - d) the Ombudsman

For further information refer to the *Community Visitors Reporting Flowchart* in Section 8 of this protocol.

### **4.3 Resolving disputes in relation to this protocol and the visiting process**

Where a dispute exists in relation to this protocol, parties should seek to raise and resolve the issue at the most local level possible. The following process will act as a guide to resolving the matter.

- The Community Visitor or staff member on duty should raise the identified dispute at the time of, or as soon after the visit where possible.
- If unresolved, the dispute should be referred to both the Regional Convenor and the nominated service manager. A meeting may then be required in order to clarify and resolve the situation. At this stage a written record should be made noting the parties involved, the substance of the dispute and resolution or any steps taken towards resolution.
- If the dispute still remains unresolved, details should be put in writing and referred to the appropriate senior manager of either the CVP or the disability service provider.
- Should the dispute continue to remain unresolved, it will be referred to the Regional Director for a Department of Human Services managed service or the CEO of a Community Service Organisation, or the Public Advocate. The involvement of the incumbents of these positions in any dispute resolution process will be unusual and will only occur after all previous stages in the dispute procedure have been undertaken.
- Actions to resolve the dispute will be implemented within timelines that are agreed upon by the parties involved.

## **5 Future Commitments**

Subject to further negotiation, modelling and endorsement, all parties to this protocol provide in principle agreement for the following commitments:

### **5.1 Record of Community Visits**

- Effective from 1 March 2008, subject to agreement of a standardised process that is agreed by all parties to this Protocol, Disability Service Providers are required to maintain a Community Visitors file at each residential facility. At a minimum, the file should include a copy of this Protocol, along with copies of Records of Visits (including Issues Reports), and written responses from the Disability Service Providers.

### **5.2 Notification of Resident Deaths**

- Effective from 1 February 2008, subject to endorsement of a procedure by all parties to this Protocol, the CVP will be advised in the event of a resident death.

## 6 Glossary Of Terms

**Community Service Organisation (CSO)** – refer to Section 3.1 of this document.

**Community Visitors** – refer to Section 3.1 of this document.

**Community Visitors Board** – refer to Section 3.1 of this document.

**Record of Visit**– this is the formal record of visit as required by the Act (section 132). It provides evidence of the visit and general comments about the visit. An Issues Report is an optional attachment outlining specific issues of concern to be raised with the service provider management.

**Community Visitor Panel** – group of two or three Community Visitors who conduct a visit to a residential service.

**Community Visitors Program Unit** - is the unit based at the Office of the Public Advocate that has statewide responsibility for coordinating the Community Visitors Program.

**Community Visitors Program Unit Coordinators** – the person in the Community Visitors Program Unit who has a responsibility for coordinating and supporting the work of Community Visitors and Regional Convenors in allocated regions of Victoria.

**Department of Human Services (DHS)** – refer to Section 3.1 of this document.

**Disability Accommodation Services (DAS)** – refer to Section 3.1 of this document.

**Disability Act 2006** – refer to Section 3.1 of this document.

**Disability Service Provider** – refer to to Section 3.1 of this document.

**Disability Services Division** – A Division in DHS responsible for the administration of the *Disability Act 2006*.

**Issues** – any complaint or issue of concern that may have arisen during a visit or been referred through the Office of the Public Advocate to Community Visitors, that relates to the provision of a residential service as required by the *Disability Act 2006* (section 30).

**Issues Report** - An optional attachment to the Record of Visit that outlines specific issues of concern to be raised with the disability service provider management.

**Medical record** – A medical record is a record created by a treating medical practitioner for a medical purpose, that is, for the medical assessment, diagnosis and treatment of a person.

**Nominated service manager** - Refers to a management role or position that has been nominated by the service to undertake the particular responsibility described in the protocol.

**Office of the Public Advocate** – refer to to Section 3.1 of this document.

**Panel secretary** – The person in charge of a Community Visitor panel who coordinates visits and is responsible for the completion and lodging of the Record of Visit and Issues Report

**Partnerships and Service Planning (PASP)** – Disability Partnerships and Service Planning is the program area responsible for funding and working in partnership with Community Service Organisations that provide a range of services for people with a disability.

**Regional Convenors** – refer to Section 3.1 of this document.

**Register of Disability Service Providers** – refer to Section 3.1 of this document.

**Residential Service** - Refers to a residential institution or residential service provided by DHS or a community service organisation and funded by the Disability Services Division for the purpose of providing shared supported accommodation, or residential respite care. Residential services have rostered staff and provide accommodation and support or respite to people with a disability accessing services funded under the *Disability Act 2006*.

A residential service does not include the private home of a person with a disability or carer. Where a service requests a visit from the CVP and is unclear as to its status as a registered residential service, clarification should be sought from the Register of Disability Service Providers.

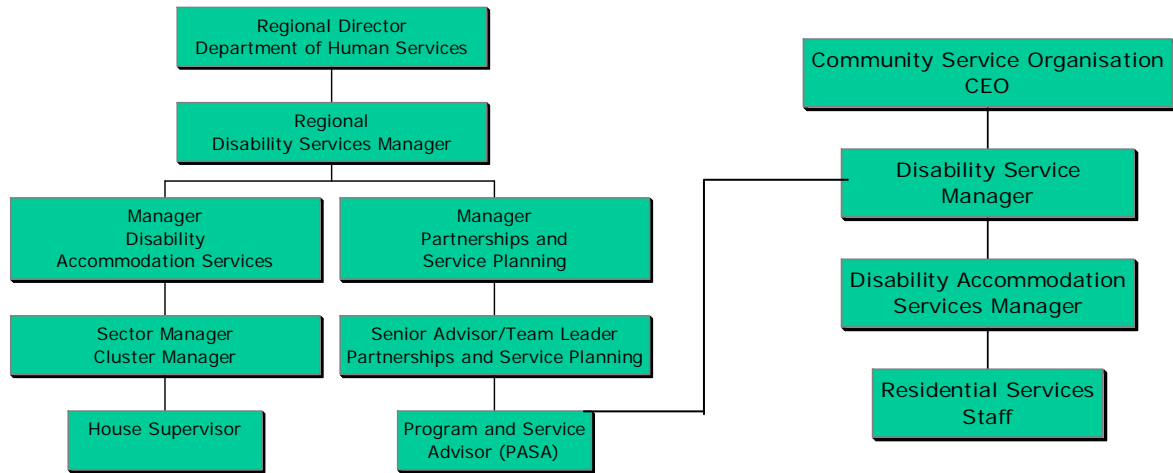
**Residential institution** - Refers to the definition under the *Disability Act 2006*. It includes Sandhurst, Colanda, Kew Residential Services and the Long Term Rehabilitation Unit at Plenty Residential Services.

**Resident's Guardian** – the person appointed by VCAT to make decisions under the *Guardianship and Administration Act 1986* for a person with a disability aged 18 years or more, 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.

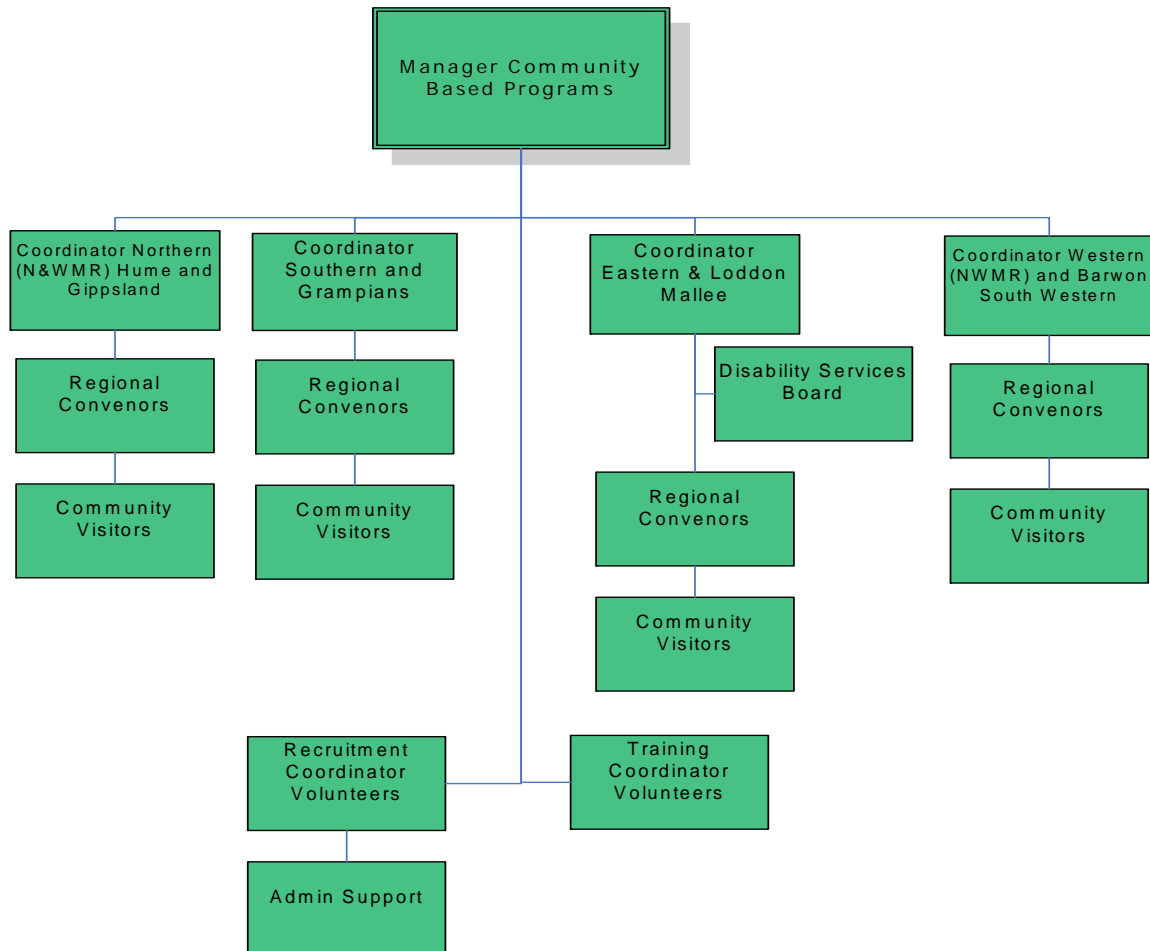
**Support plan** – is an individualised plan, which reflects the support needs of a person with a disability across a whole range of life areas, as outlined in the planning provisions of the Act (sections 52-55).

## 7 Organisational Charts

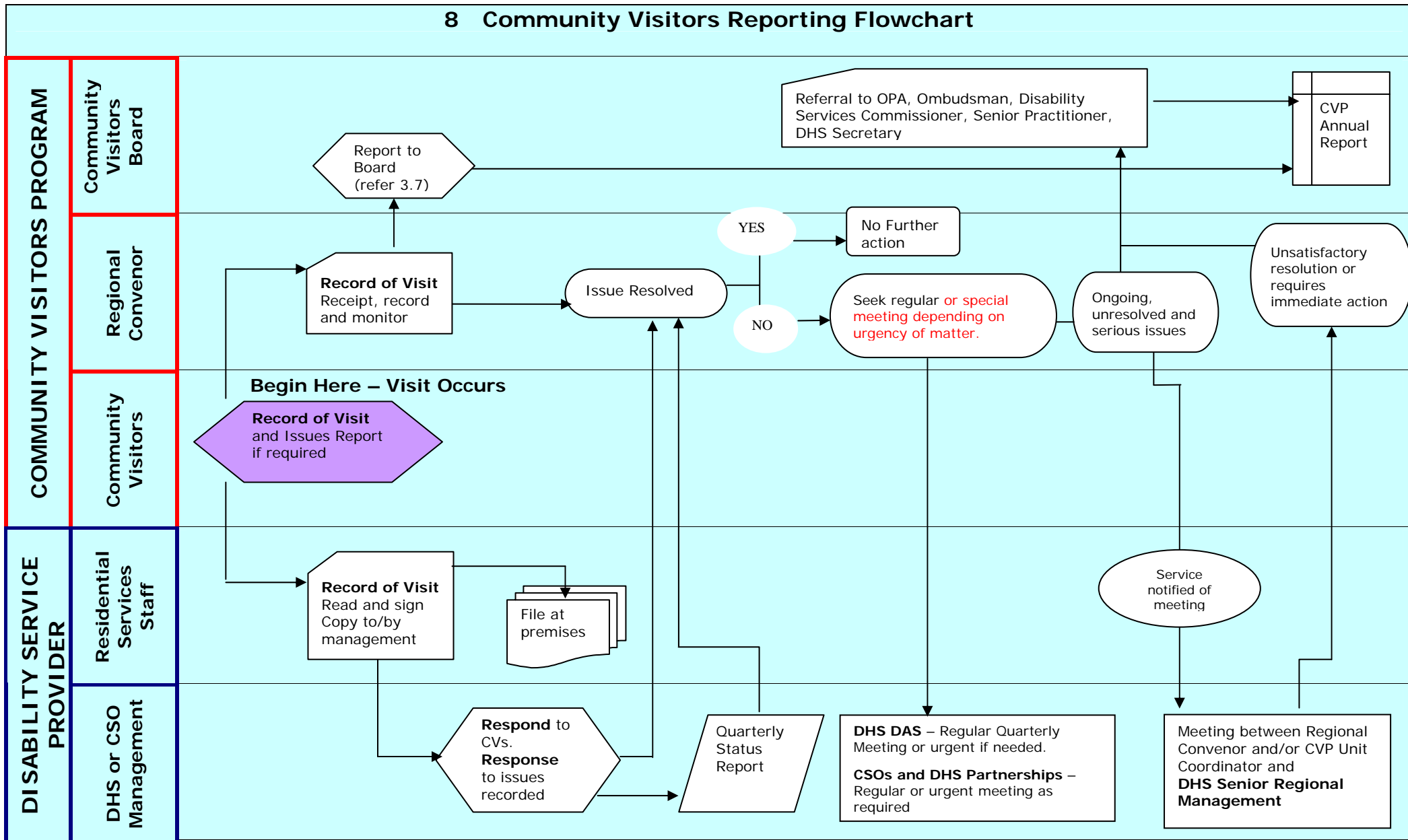
### 7.1 Disability Service Providers –Department of Human Services and Community Service Organisations



### 7.2 Community Visitors Program



### 8 Community Visitors Reporting Flowchart



## 9 Appendix 1:

## Appendix 1

### Objectives and Principles of the Disability Act (2006)

The information below is extracted from Section 4 (Part 2 – Objectives and Principles) of the Disability Act 2006.

s. 4

#### Part 2—Objectives and Principles

##### 4. Objectives of Act

The objectives of this 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.

##### 5. Principles

- (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.

- (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 the Act and the provision of disability services.

## **6. Persons 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.
- (2) The repeal of the **Intellectually Disabled Persons' Services Act 1986** by this Act does not affect the responsibility of the Minister and the Secretary for the provision, management, development and planning of services for persons with an intellectual disability.
- (3) For the purposes of determining whether or not a person over the age of 5 years has an intellectual disability—
- (a) if a standardised measurement of intelligence is used to assess general intellectual functioning and it—
    - (i) indicates that the person has an intelligence not higher than 2 standard deviations below the population average,

- then he or she must be taken to have significant sub-average general intellectual functioning;
- (ii) indicates that the person has an intelligence not lower than 2 standard deviations below the population average, then he or she must be taken not to have significant sub-average general intellectual functioning;
  - (iii) is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, then the Secretary may take into account other indicators of general intellectual functioning in determining whether or not the person has significant sub-average general intellectual functioning;
- (b) if a standardised measurement of adaptive behaviour is used to assess adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, then he or she must be taken to have significant deficits in adaptive behaviour.
- (4) In applying a standardised measurement of intelligence for the purposes of subsection (3)(a), the Secretary must consider the test result within the 95% confidence level as determined by the standard error of measurement of the test.
  - (5) Nothing in subsection (3) requires the Secretary to use a standardised measurement in the assessment of intellectual disability.
  - (6) Section 55 provides for planning for persons with an intellectual disability.
  - (7) Sections 86 to 88 provide for residential services for persons with an intellectual disability who require admission to a residential institution.
  - (8) Part 8 provides for persons with an intellectual disability who require compulsory treatment.
  - (9) 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 this Act.

## **7. Provision of advice, notification or information under this Act**

- (1) The contents of any advice, notice or information given or provided to a person with a disability under this Act must be explained by the person giving the advice, notice or information to the maximum extent possible to the person with a disability in the language, mode of communication and terms which that person is most likely to understand.
- (2) An explanation given under subsection (1) must where reasonable be given both orally and in writing.
- (3) If a person appears to be incapable of reading and understanding information provided under this Act, a disability service provider must use reasonable endeavours to convey the information to the person in the language, mode of communication or terms which the person is most likely to understand.

- (4) For the purposes of subsection (3), the disability service provider may give a copy of the advice, notice or information—
  - (a) to a family member, guardian, advocate or other person chosen by the person with a disability; or
  - (b) if no person is chosen under paragraph (a), to a person who the disability service provider considers can assist the person with a disability and is not employed by, or a representative of, the disability service provider.