

DISABILITY ACT 2006

A GUIDE FOR BOARDS OF MANAGEMENT OF DISABILITY SERVICE PROVIDERS



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Glossary

Authorised Program Officer means a person appointed under section 139 or 190 of the Disability Act 2006. An Authorised Program Officer is responsible for ensuring that the use of any restrictive interventions conforms to the requirements of the Act.

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.

Community residential unit means a residential service which is declared to be a community residential unit under section 64 of the Act.

Community visitor means a person appointed under section 28 of the Act.

Complaint means a complaint within the meaning of section 109; that is 'if the complaint arises out of the provision of a disability service; or is that a disability service provider has acted unreasonably by not properly investigating, or not taking proper action upon, a complaint made to the disability service provider'.

Department means the Victorian Department of Human Services.

Developmental delay is defined in the Act as 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: self-care; receptive and expressive language; cognitive development; motor development; and 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 is defined in the Act as:

- a. a sensory, physical or neurological impairment or acquired brain injury or any combination thereof, which is, or is likely to be, permanent; and causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and requires significant on-going or long-term episodic support, and 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 the secretary, or a person or body registered on the register of disability service providers.

Intellectual disability in relation to a person over the age of 5 years is defined in the Act as the concurrent existence of significant sub-average general intellectual functioning, and

significant deficits in adaptive behaviour, each of which became manifest before the age of 18 years.

Minister means the Minister for Community Services.

Rent component means a payment by a resident for the use of their 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 service means residential accommodation with rostered staff provided by, or on behalf of, a disability service provider for the purpose of providing disability services for one or more residents in a community residential unit, or for one or more residents in a residential service other than a community residential unit.

Restrictive intervention means any intervention that is used to restrict the rights or freedom of movement of a person with a disability, including chemical restraint, mechanical restraint or seclusion.

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 of Human Services.

Senior Practitioner means the person appointed as the Senior Practitioner under section 23.

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.

The Act and what it means for your board

The Disability Act 2006 became fully operational on 1 July 2007. The Act strengthens the rights of people with disabilities, and supports their inclusion and full participation in the community.

The Act applies to most disability services providers funded under the disability program of the Victorian Department of Human Services¹.

The Act strengthens disability service provider obligations regarding community inclusion and participation of people with a disability; streamlines access to services; and increases the accountability of disability services providers. It strengthens complaints mechanisms for people with a disability, and introduces a number of new processes and timelines applicable to service providers.

Boards of management of disability service providers are responsible for ensuring that their organisations are effective, sustainable, responsive and capable of delivering high quality services. Boards are also responsible for ensuring their organisation's compliance with relevant legislation and funding requirements.

Boards may need to lead and support their organisation through changes to the way services are provided, to ensure that they are flexible and targeted to the individual needs of people with a disability, and compliant with the principles and provisions of the new Disability Act 2006.

This document provides a guide to the Disability Act 2006 for boards of disability service organisations. It commences with an overview of what makes an effective board of management, in recognition of the need to put in place good governance measures in order to effectively respond to new legislation. The Guide recognises that boards need to focus on issues of governance rather than operational concerns. The document then addresses those aspects of the Disability Act 2006 relevant to boards of disability service providers, and poses a number of questions for board members to consider in relation to the Act.

¹ The majority of disability services funded by the Victorian Government require a service provider to be registered as a disability service provider under the Act. However there are a few activities, such as building inclusive communities and sector development, that do not require a service provider to be registered. The Act also applies to the Secretary, and therefore covers the disability services provided by the Department of Human Services.

What makes an effective board of management?

This section of the Guide discusses the concept of governance, areas of board responsibility and the duties of individual board members. It notes a number of tools which some boards of disability

service providers find useful in achieving effective governance. The information is presented as the basis for board discussion, rather than as definitive material on the topic.

What is governance?

The terms *governance*, *corporate governance*, and *enterprise governance* can be defined in a range of ways, as discussed in the literature. Good governance requires boards to provide leadership and strategic direction, monitor the performance of the organisation, and ensure compliance with legislation, standards, and other requirements.

Enterprise governance is 'the set of responsibilities and practices exercised by a board and executive management with the goal of providing strategic direction, ensuring that the objectives are achieved, ascertaining that risks are managed appropriately and verifying that the organisation's resources are used responsibly'².

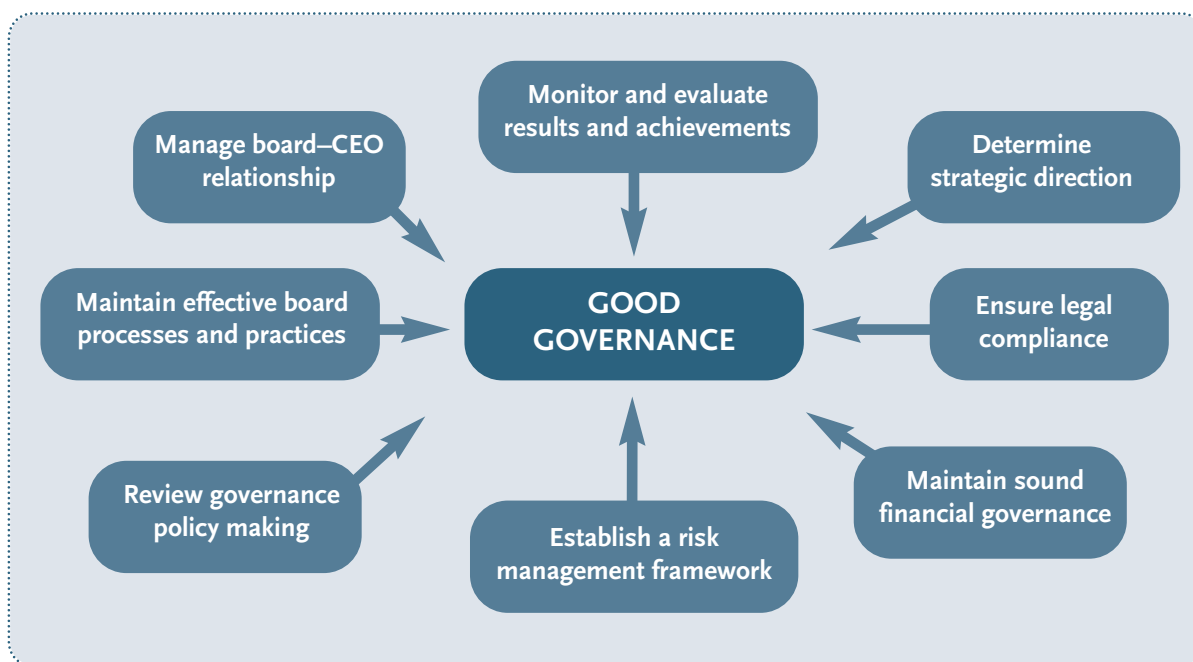
Recent international literature emphasises the need for boards to maintain a focus on both the **conformance** dimensions of governance, which include compliance with legislative and other requirements, management of risk, and monitoring of performance, and on the **performance** elements of governance, comprising a focus on strategic opportunities and developments and leadership³. It is argued that boards of successful organisations maintain attention on both dimensions. Boards must also take account of both internal and external developments, as they undertake work in the areas of external accountability, strategy, monitoring and supervising, and policy making⁴.

² *Enterprise Governance: Getting the Balance Right*, International Federation of Accountants, Chartered Institute of Management Accountants, 2004, p.4.

³ *Governance: Getting the Balance Right*, International Federation of Accountants, Chartered Institute of Management Accountants, 2004; 'Enterprise Governance Explained', Beyond Governance website, www.beyondgovernance.com 21/11/2007.

⁴ Robert I. Tricker, *International Corporate Governance: Text Readings and Cases*, New York: Prentice Hall, 1994.

Areas of board responsibility



The responsibilities of boards of management can be classed under the following headings⁵:

1. Determine the organisation's strategic direction

Boards of management are responsible for setting the strategic direction of an organisation, often through a mission statement, as well as developing a set of outcomes to be achieved. Both the board and chief executive officer (CEO) are responsible for strategic planning.

2. Manage board-CEO relationship

A key factor in successful organisations is a sound relationship between the board and the CEO. This can be based upon mutual respect for different but mutually interdependent roles and responsibilities; clearly defined and documented delegations; clearly defined performance targets; robust debate; a willingness to challenge, offer and receive constructive criticism; and acceptance that once the board has delegated to the CEO the actions and decisions of the CEO must be respected.

Boards are responsible for the selection of the CEO, and for development of a governance framework within which the CEO will operate. Boards should develop monitoring processes to ensure that the CEO complies with board requirements and that there is a sound basis for assessing CEO effectiveness.

3. Manage stakeholder relationships

Boards need to ensure that there are systems and processes in place to enable them to understand the aspirations, needs and concerns of their organisation's service users, families and carers, and other major stakeholders. These views must then be reflected as appropriate in organisational priorities, programs and services. Boards should involve stakeholders in consultation processes that are genuine and responsive and contribute to the organisation's strategic direction setting.

⁵ Information drawn from a range of resources, including *Best Practice Governance*, VHA, ACHSE, Department of Human Services, undated. *Governance guidelines for directors and members of boards of public entities*, Department of Human Services, 2006. *Good Governance Practice for Voluntary Committees of Management*, Bradfield Nyland Group for State Government of Victoria, 2002. *The Governance Program*, Australian Institute of Community Practice and Governance, undated.

4. Set the organisation's risk management framework

Risk is an essential and unavoidable element in the growth and development of any organisation. Boards need to systematically consider all possible risks, problems or disasters that could result in financial, reputational or other significant loss or damage to the organisation. Strategic thinking tools and external specialist advice can assist boards to make a realistic evaluation of the level of risk. It is the responsibility of boards to establish a level of acceptable risk but up to the CEO to implement actions to avoid or minimise risk, enable the organisation to manage any negative impact, and maximise the positive opportunities arising from risk.

External risks can be managed through development of a strategic framework which is supported by operational plans developed by the CEO, whilst 'internal' risks can be managed with development of board-level policies that address areas of operational weakness.

5. Meet financial responsibilities

Boards have specific responsibilities regarding financial matters and records. They must ensure that proper books of account are kept and that the published accounts give an accurate picture of the organisation's financial position. Boards are required to ensure that there are adequate resources, funds, equipment and people to achieve program objectives, and provide assurance that the organisation is able to pay its debts.

Boards establish the financial policy framework, systematically request evidence of compliance with financial policies, establish the reporting requirements for the CEO, and ensure that the organisation's connection to the external auditor occurs via the board. Day-to-day financial management is the responsibility of the CEO.

6. Comply with legal requirements

Board directors are jointly and severally responsible for all decisions taken by the board, and bear ultimate accountability for all organisational matters.

Board members must recognise, understand and comply with their legal responsibilities. Boards and individual members are required to exercise a 'duty of care', act honestly, exercise a 'reasonable' level of care and diligence, avoid gaining ongoing personal advantage or making improper use of information, and at all times act in the interests of the organisation as a whole.

Board members must also carry out their fiduciary duty, that is, their trusteeship on behalf of others (members and the community) to achieve appropriate organisational outcomes, ensure the organisation's financial security, and articulate the organisation's moral and social responsibility.

7. Review governance policy making

The development of organisational policy at a governance level, with a program of regular and systematic review, can be an effective way of board's influencing organisation direction and performance. 'Policies enable the board to speak with one voice'⁶, and once adopted, all board members are bound by governance policies, whether or not the decision was unanimous.

Once governance policies are established, the CEO can develop the operational policies necessary to implement the actions stated in the governance policies.

⁶ J. Carver, *Boards That Make a Difference*, San Francisco: Jossey-Bass, 1990, quoted in *Best Practice Governance*, VHA, ACHSE, Department of Human Services, undated p.13.

8. Maintain effective board processes and practices

Whilst organisations' constitutions specify some of the governance process for boards, there is a range of processes developed by boards for their own operation. For example, boards may develop:

- standards relating to the behaviour and performance of their board
- processes about selection of board members to secure an appropriate mix of expertise, experience and diversity on the board
- policy regarding induction and ongoing training and development for board members
- a focus on policy making and review rather than operational matters
- policy about the role of the chairperson, recognising that the chairperson's primary role is to assure that the board's governance performance is effective through good management of government processes; and recognising that the chairperson is a 'first among equals' acting on behalf of the board as a whole, and is neither the 'boss' of the board nor of the CEO
- policy about establishment of board committees
- a board culture that encourages diversity of opinion and active contribution from all members
- review processes for both the board as a whole and for individual members, to ensure it remains representative, responsive and effective.

9. Monitor and evaluate results and achievements

An on-going responsibility of boards is to monitor and evaluate the organisation to ensure it achieves the expected outcomes. Boards need to focus on results rather than on the level of activity or amount of effort expended by the CEO and staff. A broad and balanced concern with all aspects of organisational performance, rather than on particular areas, is also useful. Similarly, a focus on short-term organisational achievements and issues needs to be balanced with attention to building enhanced organisational capability over the longer term. Both information provided by the CEO and from independent external reports can be of value to this monitoring role.

The use of a program of rolling review of policies, sometimes combined with reports on those areas experiencing developments out of the norm ('exception reporting'), can be an effective and efficient method of addressing this area of board responsibility.

What are my responsibilities as a board member?

Individual board members each carry responsibility for the organisation, and their behaviour impacts on the quality of governance of the board.

The Victorian Public Entity Director's *Code of Conduct 2006* can be used as a guide to the behaviour expected of individual board members.

As a board member 'you are required to:

- act with **honesty and integrity**. Be open and transparent in your dealings; use power responsibly; do not place yourself in a position of conflict of interest; strive to earn and sustain public trust of a high level.
- act in **good faith in the best interests of the public entity**. Demonstrate accountability for your actions; accept responsibility for your decisions; do not engage in activities that may bring you or the public entity into disrepute.
- act **fairly and impartially**. Avoid bias, discrimination, caprice or self-interest; demonstrate respect for others by acting in a professional and courteous manner.
- **use information appropriately**. Ensure information gained as a director is only applied to proper purposes and is kept confidential.
- **use your position appropriately**. Do not use your position as a director to seek an undue advantage for yourself, family members or associates, or to cause detriment to the public entity; ensure that you decline gifts or favours that may cast doubt on your ability to apply independent judgement as a board member of the public entity.
- act in a **financially responsible** manner. Understand financial reports, audit reports and other financial material that comes before the board; actively inquire into this material.
- exercise due care, diligence and skill. Ascertain all relevant information; make reasonable enquiries; understand the financial, strategic and other implications of decisions⁷.
- **comply with legislation**.
- demonstrate **leadership and stewardship**.

Tools and processes for good governance

Some boards of management of disability service providers have found the following processes and tools contribute to achieving good governance:

- communication of a coherent vision and set of goals for the organization
- clear documentation of roles and responsibilities for board members and staff (paid and unpaid)
- documented delegations of authority
- provision of a 'control framework' of internal accountability, monitoring and reporting
- development of risk management plans
- maintenance of sound financial planning and management processes
- use of sub-committees, each with a defined role, clear boundaries of authority, reporting requirements and membership, to enhance the depth of analysis of particular issues and develop recommendations
- implementation of periodic reviews of the performance of the board and the organization
- implementation of effective processes to ensure ongoing improvement of the organisation and its services
- production of regular 'exception' reports on key issues to identify issues for attention.

⁷ State Services Authority, Victorian Public Entity Directors' Code of Conduct 2006, p.5.



Checklist for boards

- Does your board maintain a balance of attention between **conformance** and **performance** of the organisation?
- Does your board maintain a focus on governance level issues and concerns rather than operational issues? Do you have a clear delineation of responsibility between the board and the organisation's management?
- Have you developed and communicated a coherent vision and set of goals for the organisation?
- Do your strategic planning processes involve effective consultation with people using your service, their families and carers and other stakeholders?
- Does your board monitor organisational performance through periodic reviews of all policies and aspects of your organisation?
- Does your board take appropriate action where performance expectations are not met?
- Do you have a formal risk management framework for your organisation?
- Do you have clear financial delegations and financial controls?
- Do board members have the necessary skills to confidently, effectively and independently assess advice and recommendations? Does the board undertake a 'gap analysis' to determine shortfalls in skills and abilities prior to recruiting new members?
- Are all board members aware of their individual responsibilities under the Directors' Code of Conduct?
- Does the board work constructively as a team and foster trust and respect between members?
- Is there periodic review of board members' individual and joint performance?

Introduction to the Disability Act 2006

The *Disability Act 2006* contributes to achievement of the vision for people with disabilities as set out in the *Victorian State Disability Plan 2002–2012*. The Act provides the framework for a whole-of-government, whole-of-community approach to enable people with a disability to more actively participate in the life of the community.

‘By 2012, Victoria will be a stronger and more inclusive community – a place where diversity is embraced and celebrated, and where everyone has the same opportunities to participate in the life of the community, and the same responsibilities towards society as all other citizens of Victoria.’

Victorian State Disability Plan 2002–2012

The Act replaces the *Intellectually Disabled Person’s Services Act 1986* and *Disability Services Act 1991*. It reflects the government’s commitment to fostering a fairer society and reducing disadvantage, through improved provision of health and community services.⁸

The Act includes key principles, which provide a framework for the development of high-quality disability services in line with the vision of the State Plan.

Key areas of change include:

- **registration** of service providers
- **access** to services
- **planning** for people with disabilities
- **information provision**
- **complaints procedures.**

The Act introduces a number of new or strengthened bodies to deal with complaints and ensure that disability service providers meet their legal obligations, including:

- Disability Services Commissioner
- Disability Services Board
- Victorian Civil and Administrative Tribunal (VCAT).

There are also new or augmented roles for:

- Senior Practitioners
- Authorised Program Officers (APOs).

The Act includes provisions applicable to all disability service providers, and a number applicable to selected agencies, such as those operating residential services, using restrictive interventions or operating as institutions. This Guide does not cover the responsibilities of boards of management responsible for institutions as defined by the Act.⁹

⁸ This commitment is outlined in the policy documents ‘Growing Victoria Together’, ‘A Fairer Victoria’ and ‘A Fairer Victoria – progress and next steps’ (see www.dpc.vic.gov.au and www.dvc.vic.gov.au). Together with the guiding principles – equality, dignity and self-determination, diversity and non-discrimination – this vision underpins the *Victorian State Disability Plan 2002–2012* and *Disability Act 2006*.

⁹ Section 86 of the Act specifies that the Governor-in-Council may proclaim certain premises as institutions.

Provisions applicable to all disability service providers

Principles

The Act includes principles for people with a disability, including specific provisions for people

with an intellectual disability, and for disability service providers.

Principles for people with a disability

People with a disability should have the same rights and responsibilities as other members of the community, including the right to:

- respect for their human worth and dignity as individuals
- live free from abuse, neglect or exploitation
- realise their individual capacity for physical, social, emotional and intellectual development
- exercise control over their own lives
- actively participate in the decisions that affect their lives
- access information and communicate in a manner appropriate to their communication and cultural needs
- use services in the community that support their quality of life.¹⁰

The Act also contains some principles that are specific to people with an intellectual disability.

- People with an intellectual disability have a capacity for physical, social, emotional and intellectual development.

- People 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.
- Services for people with an intellectual disability should be designed and provided in a manner that maximises opportunities for people living in residential institutions to live in community-based accommodation.
- People 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.
- Services for people with an intellectual disability should be designed and provided in a manner that ensures that developmental opportunities exist to enable the realisation of their individual capacities.
- Services for people 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.¹¹

¹⁰ Summary from Information Sheet 1, 'The Disability Act 2006', Department of Human Services, 2006.

¹¹ Summary from 'Disability Act 2006: A guide for disability service providers', Department of Human Services, 2006, p.4.

Principles for disability services

Disability services should:

- assist people with a disability to be included and take part in activities in the community
- maximise choice and independence for people with a disability
- recognise that people with different types of disability may need different kinds of support
- consider and respect the role of families and other people who are important to a person with a disability
- where possible strengthen and build the capacity of families who are supporting people with a disability
- be aware of the needs of children with a disability
- be aware of any extra disadvantage a person may have because of their culture, language or where they live
- ensure that people with a disability have support, if they need it, to make decisions
- be of high quality and protect the rights of people using the service
- choose the least restrictive option possible, if a person's rights or opportunities need to be restricted.¹²



Checklist for boards

- Does your board's strategic planning incorporate these principles?*

Does the vision and mission, strategic objectives and workplans of your organisation reflect the principles within the Act? Have you identified challenges for your organisation in implementing the Act, and considered how to address each of these?

- Do you have a program of review of your organisation's strategic objectives, processes and procedures to ensure they are aligned with the principles of the Act?*

It is important that there is compliance with the intent of the Act, as spelt out in these principles, as well as with the Act's specific provisions.

- Does your organisation have a training and development program to ensure staff at all levels understand the principles and intent of the Act, as well as compliance requirements?*

¹² Summary from 'About the Disability Act 2006', from the DHS website www.dhs.vic.gov.au.

Registration of disability service providers

Organisations that apply for funding to provide services to people with a disability under the Act need to apply for registration as a disability service provider.

Disability service providers that are currently funded by the Department are automatically registered until 30 June 2009. They then need to reapply for registration, which will generally be for three years.

Service providers must notify the Department within 14 days of any change to their registration information such as a change of address. Failure to do so may result in a financial penalty.

Registration can be refused or revoked. If this occurs a disability service provider may apply to the Department and subsequently to the Victorian Civil and Administrative Tribunal (VCAT) for review of the decision, within timelines specified by the Act.

The register of disability service providers is maintained on the Department's website www.dhs.vic.gov.au.



Checklist for boards

- Is a process in place to ensure the re-registration proforma is submitted when required?*

Has your policy and procedures manual been amended to include this new requirement?

Standards and quality

The *Disability Act 2006* requires the Minister to determine standards to be met by disability service providers when providing services to people with disabilities. The Department may also monitor disability service providers' compliance with performance measures relating to the standards.

The standards for disability services came into operation on 1 July 2007. They include **outcome standards**, which measure whether services and supports make a difference to the lives of the people using them; and **industry standards**, which relate to providers' systems and processes. Independent monitoring of quality will commence from 2009.

If the Secretary of the Department considers that a disability service provider has breached or not complied with relevant performance measures or the conditions of their contract or any requirement

of the Act, it may stop payment, terminate the contract or remove the board of management.

The Minister may recommend to the Governor-in-Council that an administrator be appointed to a disability service organisation under certain circumstances. The power to appoint an administrator has been retained from the *Intellectually Disabled Persons' Services Act 1986*.

The Act also describes the appointment of community visitors and has strengthened their role. Community visitors are able to inspect and submit inquiries to residential services in relation to people with a disability. Further information about community visitors is available from the Office of the Public Advocate at

www.publicadvocate.vic.gov.au.



Checklist for boards

- Does your board oversee a performance review program to ensure that your organisation works to meet the quality standards?*

A program may include business planning and review, collection and analysis of data about performance, and periodic review of policies and processes. Sound performance review systems will assist organisations to meet the quality standards as well as help ensure compliance with the Act.

- Do you apply performance review processes to your board of management, as well as to the rest of the organisation?*

Review of your operation, as a board and as individual contributors to the board, is a valuable element of good governance.

- Do your review processes incorporate and address issues of concern raised by community visitors?*

- Has your organisation participated in training programs about the quality standards and framework, with inclusion of staff at all levels?*

Access to disability services

The Act aims to ensure that all people with a disability can access disability services through a simple and consistent process.

The Act **targets the same groups** of people with disabilities for access to disability services as under the previous legislation, but **changes the process** used to access services.

How is disability defined?

Under the Act, a person with a disability is someone with an impairment:

- that may be sensory, physical, neurological or acquired brain injury
- that results in a substantially reduced capacity in either self-care, self-management, mobility or communication, and
- who requires ongoing support or episodes of support in the long term.

The definition of disability also includes intellectual disability or developmental delay, but does not include autism or mental illness.

Disability service providers must ensure that people accessing their services are within this target group.

Who can access disability services?

A person with a disability, including a person with intellectual disability, may request services from a service provider. A person with an intellectual disability no longer needs to be registered with the Department before receiving a service, although a written statement of intellectual disability may still be provided by the Department.

The service provider may accept a request for service, or refuse a request for a range of reasons, such as the person having needs that are not a priority for the service, a service not being available through that service provider, or the needs being better met by another service system. In the case of a refusal, the service provider must notify the person with a disability in writing, with reasons, and within 14 days.

The service provider may refuse a request for service on the basis of the person not having a disability as defined by the Act. In this case, the provider must

advise the person, in writing within 14 days, of her or his right to ask the Department for a decision regarding their disability status. If the Secretary decides that the person does not have a disability, the person may seek a review by the Victorian Civil and Administrative Tribunal (VCAT).

In determining whether a person has a disability as defined by the Act, disability service providers may need to gather relevant information. The provider may also arrange a suitable expert to undertake the assessment, or refer the person to another service provider or to the Department.

In order to access services, a person must not only have a disability as defined under the Act. They must also have needs that can best be met by the disability service system, rather than for example by the aged care system, and have needs which are designated a priority for the disability service system, as illustrated below.



Decisions about priorities for service provision differ according to program guidelines for different disability services. Allocation of resources may be

coordinated by the Department or undertaken by disability service providers depending on the program.



Checklist for boards

- Do your organisation's policies and processes reflect the access requirements of the Act?*

Do policy documents and staff training include the definition of disability under the Act, and address the requirements of the Act relating to assessment of disability and relating to refusal of service?

Planning for and with people with a disability

'Planning encompasses a range of responses from a brief discussion and agreement about actions required through to an extensive process and the development of a plan across a whole range of life areas documented in a format that is meaningful to the person and their network.'

Disability Act 2006, Section 52(2)

The Act reinforces the individualised planning and support approach, which supports people with a disability to explore their goals and needs within the context of the community.

Planning is available to any person who has a disability under the Act, and should:

- be directed by a person with a disability
- be individualised
- respect families and other people who are important to the person with a disability.

- consider the informal support available to the person with a disability and consider other support services generally available to any person in the community
- maximise the choice and independence of the person with a disability
- facilitate tailored and flexible responses to the individual goals and needs of the person with a disability.¹³

Assistance with planning

A person with a disability, or a person acting on behalf of a person with a disability, may ask a disability service provider to assist them with planning. If the person has an intellectual disability the service provider must offer the person assistance with planning.

The service provider may undertake the assistance directly or may arrange for the assistance to be provided.

Service providers must provide assistance with planning if planning and case management are part

of their core functions; or they have expertise in this area, and/or knowledge or experience relating to a specific disability, if this is required.

Service providers may choose not to provide assistance with planning if they have limited expertise, limited specific knowledge, and/or limited capacity.

Assistance with planning, or an appropriate referral, needs to be made within four weeks of the request for assistance.

¹³ Summary from Information Sheet 4, 'The Disability Act 2006', Department of Human Services, 2006.

Support plans

Service providers are required to develop a support plan for all people receiving an 'on-going' disability service. Development of the plan is directed by the person with a disability, and their family or network. It may involve several disability service providers working together to jointly develop a single plan, if this is requested by the person with a disability.

The plan must include the person's goals and strategies and how the provider will support these goals. The plan can also address the goals and strategies relating to other disability supports, other community services and informal supports.

A support plan must be developed within 60 calendar days of the person starting regular access to an on-going disability service, and support plans must be reviewed at least once every three years.

The person with a disability may choose how much information is shared between providers. For example, personal and private information do not form part of a support plan but may be shared between service providers if the person agrees.



Checklist for boards

- Do your organisation's planning processes enable people with disability to direct the process, consider informal supports, achieve maximum choice and independence, and receive tailored and flexible responses?*

Have your staff received training about offering assistance with planning, and about the timeframes for development of support plans and for referral? Are they aware of the difference between 'on-going' and other disability services, and the implications of this?

- Does your organisation have a process that facilitates joint development of support plans with other service providers?*

Information provision

The Disability Act 2006 aims to empower people with a disability to exercise their rights and choices in making decisions that affect their lives.

Service providers must provide information to people with disabilities who access their services, about the services to be provided and their rights under the Act. This information needs to be given to people when they commence using the service and to all existing service users by February 2008.

Information given to a person must:

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

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

What information must be provided to people with a disability?

Disability service providers must provide relevant written information about their service as soon as a person with a disability starts using the service.

The Act requires, as a minimum, the following information:

- details of the disability service to be provided
- any costs associated with the service
- any condition related to the provision of the service
- an explanation of the procedures for making a complaint to the disability service provider and to the Disability Services Commissioner

- details of any legal rights and entitlements the person has under the Act
- any information that is required by the Secretary or the Senior Practitioner
- any information required to be provided under an order made by VCAT.

If a person lives in a residential service, the disability service provider is not required to provide information that has already been provided in a 'residential statement'.

Information privacy

Disability service providers must not disclose information about a person with a disability that has been obtained through the provision of a disability service, apart from in various instances exempted under the Act. These include:

- where the release of information is required to meet a duty under the Act
- where the person has given their consent

- where it is required 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, Senior Practitioner or Disability Services Commissioner.

Culturally appropriate practice

Disability service providers need to:

- plan and deliver culturally appropriate supports and services
- encourage individuals, families and communities of culturally and linguistically diverse backgrounds to take part in decision making
- communicate information that is meaningful and easily understood in community languages and in culturally appropriate formats
- improve and support the ability of staff to work with people of culturally diverse backgrounds in disability services.



Checklist for boards

- Is the information given to all existing and new service users provided in an accessible format and compliant with the requirements of the Act?*

Have staff received training about the privacy of service user information? Are they aware of the instances when disclosure of information is allowed under the Act?

- Is your board promoting cultural competence?*

Are the services and supports provided by your organisation appropriate to individuals and families of culturally and linguistically diverse backgrounds? Is your board leading and supporting any change of behaviour and attitudes required to achieve cultural competence?

Complaints processes

The Act strengthens independent complaint and review systems in order to improve the quality of services for people with a disability.

The Act:

- requires disability service providers to have a system for effectively managing complaints made by people with a disability and their representatives
- establishes the independent **Disability Services Commissioner** to investigate and conciliate complaints about disability services
- enables the **Victorian Civil and Administrative Tribunal** to accept, modify or change the decision of a disability service provider, depending on the situation
- establishes a **Disability Services Board** to oversee the disability complaints system and to advise the Disability Services Commissioner and Minister of Human Services.

A complaint is an expression of dissatisfaction with a disability service provider regarding service provision.

Disability service providers must:

- have a clear process for managing complaints about their services, which is confidential, visible and accessible, and includes a designated complaints contact person and an appeal or grievance process
- make sure that people who use their service know how to make a complaint
- ensure that people who make complaints are not adversely affected by making a complaint
- report every year to the Disability Services Commissioner about the number of complaints they receive and how they have managed these complaints.

Disability Services Commissioner

The Act creates an independent Disability Services Commissioner, who works with people with a disability and disability service providers to resolve complaints. The Commissioner can investigate complaints once reasonable steps have been undertaken to resolve the issue, and has broad power to look into complaints across a wide range of issues.

The Commissioner reports annually to Parliament. Service providers can be named in this report, but only after being given notice and having an opportunity to object to their naming.

Any person can make a complaint to the Disability Services Commissioner about disability services.

It is an offence to threaten or intimidate a person who has complained to the Disability Services Commissioner.



Checklist for boards

- Do you have a documented sound internal process for managing complaints that complies with the Act?*

Are the people using your service, and their families and carers, provided with information about how to make a complaint?

Are they informed of where they can take their complaint if they are not satisfied with your organisation's handling of the issue?

Does your board regularly consider trends or issues emerging through complaints, and use these to identify potential areas for service improvement?

Does your board schedule periodic review of the organisation's annual report to the Disability Services Commissioner about the number of complaints your organisation has received and how these were dealt with?

Are you confident that service users, families, carers and staff are not adversely affected if they make a complaint?

Provisions applicable to residential service providers

Residential rights for people living in residential services

Residential service

A residential service is residential accommodation with rostered staff provided by a disability service provider for the purpose of providing disability services. Examples include community residential units, residential institutions and respite houses.

The Act aims to ensure that there is a reasonable balance between the rights and responsibilities of people with a disability and the safety of all residents in the residential service. The Act outlines the duties of disability service providers, and creates a number of specific rights for people living in residential services, including rules applying to room entry.

A key requirement of the Act is that a **residential statement** must be provided when a person commences at a residential service and to existing residents by February 2008.

What is a residential statement?

A residential statement is a document for each resident that sets out the residential services to be provided by the disability service provider to support the resident.

A residential statement must include, as a minimum:

- the period of time to which the residential statement relates
- details of the residential services to be provided by the disability service provider
- the name and contact details of the disability service provider, and if the disability service provider has an agent, their name and contact details
- the cost of the services to residents, what rent and services are provided and when and how payment is to be made

- any conditions that apply to the provision of the residential services such as the rules about entering a resident's bedroom
- the duties of disability service providers
- the duties and rights of residents
- how a person can complain about the residential service.

The statement must be given to a resident in a format appropriate to their communication and cultural needs. There is a template for residential statements provided by the Department, which must be used by service providers. This is available in an 'easy to read' format and in various community languages.

Who receives the residential statement?

All residents must receive a copy of the residential statement. A copy of the statement must also be given to a guardian or an administrator, if appointed. If a person does not have a guardian or

administrator, the residential statement can be given to a family member or a person of the resident's choosing who can assist them with understanding the statement.

What are the responsibilities of the residential service?

Residents must be treated with dignity and respect, including in matters relating to their privacy. If entering a resident's room without their consent, residential support workers must enter in a reasonable manner and stay in the resident's room for only as long as is necessary.

Residential service providers need to ensure that the residence is safe, fitted with appropriate furniture, and allows residents to move freely around their home. All repairs or work to the house must be completed quickly, with minimum disruption to residents.

The Act also requires residents to have access to information including:

- the name and contact details of the disability service provider
- how to see a community visitor
- how to make a complaint.

What are the responsibilities of residents living in a residential service?

People living in residential services must pay their rent on time. They must not use the premises for illegal activity, keep dangerous items in their bedroom, or participate in any behaviour that is dangerous to themselves or others.

Residents need to inform the disability service provider of any damage caused. Residents may be required to contribute to the cost of repair if this was caused intentionally.

Management of money

A disability service provider or a person employed by a service provider must not 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 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 *Disability Act 2006*.



Checklist for boards

- Have all residents of your service received a residential statement in an appropriate format?*
- Do you have processes to train residential support workers in the requirements for entering residents' rooms?*
- Does your organisation have sound and transparent financial monitoring systems in place for management of all monies held on behalf of residents?*

Does your organisation have systems to ensure that all residents, or their administrators or guardians, receive monthly financial statements?

Are you confident that your organisation or individual employees are not acting as a financial administrator for a person with a disability who is a service user?

Does your organisation have a process to work through if a staff member becomes concerned about the management of a service user's finances?

Residential rights for people living in community residential units

The Minister for Human Services can declare a residential service a community residential unit.

The Act includes additional requirements for community residential units (CRUs), particularly regarding residential charges and relocation of

residents. Some of these requirements are reviewable by VCAT.

Community residential units

The main differences that apply to CRUs are:

- detailed provisions regarding the residential charge, the method of payment and notice of any increase in the charge
- details of appeals to VCAT in some situations about the residential charge
- the need for the disability service provider to issue a notice where a resident needs to be moved, and does not agree to the move

- in most situations a notice of temporary relocation (NOTR) will be issued first, allowing a period of time to resolve the issue that led to the move being required
- a notice to vacate (NTV) may then be issued if the situation cannot be resolved
- an NTV may be issued in other limited circumstances (without an NOTR having previously been issued).

There are timelines for these provisions. There is also a requirement that the Department and the Public Advocate be notified by the service provider if an NTR or NTV is issued. There are templates provided by the Department for use when issuing notices.

Charge for residential services

The disability service provider may charge for the provision of residential services. In most cases this will involve payment of a rent component but may also include a services component (food, utilities, etc.). The service provider must issue a receipt when requested and give at least 60 days notice of an increase in charges.

If the disability service provider reduces any service from a service component (for example, they no longer purchase food out of the charge) the residential charge must be reduced accordingly.



Checklist for boards

- Does your organisation have procedures and staff training that reflects the Act's requirements for residential services?*

Are you aware of which of your residential services have been declared CRUs?

Have your residential staff received training on the new requirements and processes relating to CRU residents?

Does the information given to residents about the residential charge clearly state what is included in the charge?

Does the information given to residents refer to the financial hardship guidelines?

Does your organisation have review and audit processes to check that all residents are receiving appropriate notices, within required timeframes?

Provisions applicable to providers using restrictive interventions

Restrictive interventions

The *Disability Act 2006* introduces a much greater level of scrutiny and accountability for disability service providers who use restrictive interventions or compulsory treatment, with:

- the creation of a Senior Practitioner position
- a requirement for disability service providers to be approved by the Secretary to use restrictive interventions
- review of certain decisions by the Victorian Civil and Administrative Tribunal (VCAT).

*A restrictive intervention is 'any intervention that is used to restrict the rights or freedom of movement of a person with a disability including chemical restraint, mechanical restraint or seclusion'. **Disability Act 2006, Section 3***

Under the Act, a restrictive intervention must be:

- the least restrictive option
- implemented as part of a behavior management plan
- carried out in accordance with the behavior management plan
- applied only for the authorised period of time.

What is the process to use restrictive interventions?

- Disability service providers must apply to the Secretary of the Department of Human Services for approval to use restrictive interventions or supervised treatment.
- They must nominate one or more Authorised Program Officers (APOs) who are responsible for use of any restrictive interventions.
- They must notify the Office of the Senior Practitioner of the names, positions and qualifications of the APOs, and any changes to these within 14 days.
- If the Department refuses or revokes approval to use restrictive interventions, disability service organisations may seek VCAT review within 28 days.

Restraint and seclusion

The Act strengthens provisions regarding the use of chemical or mechanical restraint and seclusion. 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.

Restraint and seclusion can only be used:

- to prevent a person causing physical harm to themselves or others, or destroying property that may cause harm to themselves or others, and
- is the least restrictive option possible in the circumstances, and
- is in the plan, and
- is applied within approved conditions and within the APO approved period of time.

What is the process for using restraint and seclusion?

If a disability service organisation proposes to use restraint and seclusion, it must:

- develop a behaviour management plan with the involvement of key people and with approval from the APO
- ensure there is an independent person to explain to the person with a disability the use of restraint or seclusion in the plan and their right to have this reviewed by VCAT
- notify the person with a disability before using restrictive intervention, in writing and two days ahead
- ensure the plan is regularly reviewed, at least every 12 months
- provide a copy of the behaviour management plan to the Senior Practitioner within two days of approving use of restraint or seclusion.

In an emergency situation restraint and seclusion can be used where:

- there is an imminent risk of a person causing serious harm to themselves or others, and
- there is no less restrictive method to prevent the risk.

In the case of restraint or seclusion not being part of a person's management plan, its use must be authorised by the person in charge, and the APO informed without delay. The APO must then prepare a report to inform the Senior Practitioner.

Authorised Program Officers

Authorised Program Officers (APOs) are responsible for ensuring that the use of any restrictive interventions is in accordance with the Act.

If restraint or seclusion is proposed for a person with a disability, an APO must ensure that a behaviour management plan is developed, reviewed and monitored. The APO must also ensure that an independent person is present when a plan is explained to a person with a disability.

They must provide a copy of the behaviour management plan to the Senior Practitioner, report monthly to the Senior Practitioner on the use of all restraint and seclusion, and notify the Senior Practitioner of any applications to VCAT for review of their decision to approve use of restraint or seclusion in a behaviour management plan.

Senior Practitioner

The Senior Practitioner is generally responsible for ensuring that the rights of people who are subject to restrictive interventions and compulsory treatment are protected and that appropriate standards applying to these practices are complied with.

The Office of the Senior Practitioner aims to better support disability service providers with increased access to specialist expertise, information and advice.

'The Senior Practitioner considers restrictive interventions as the absolute last resort as a method of intervention when supporting people with disabilities with behaviors of concern.'

Jeffrey Chan, Senior Practitioner, 2007

Independent person

An independent person can be a family member, friend or advocate. An independent person cannot be a disability service provider nor have any interest in a service provider which is providing or has provided disability services to the person with a disability.

The independent person will be named in the behaviour management plan, and may refer issues of concern to the Public Advocate. The Public Advocate may then refer matters to the Senior Practitioner or VCAT.



Checklist for boards

- Is your organisation working towards the minimal possible use of restrictive interventions?*
- What review processes do you use to monitor the level of use of restrictive interventions?*

Do your review and audit processes include verification that all uses of restrictive intervention are documented in behaviour management plans?
- Does your organisation have processes and procedures to enable staff to have a good understanding of what interventions are defined as restraint and seclusion?*

Do your staff receive training in the use of alternative strategies that do not involve restraint and seclusion?
- Is there periodic review of use of restraint and seclusion within your organisation?*
- Does your organisation have processes in place to ensure notifications and reports are made to the Senior Practitioner within required timeframes?*

Compulsory treatment

The Disability Act 2006 provides regulation of two types of compulsory treatment for people with an intellectual disability: civil and criminal.

Civil

The Act creates a new civil order, called a supervised treatment order. This order applies where a person:

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

Following approval by the Senior Practitioner, an APO may apply to VCAT for a supervised treatment order when the criteria outlined in the Act are met.

The Act provides protection for these people, by requiring that:

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

Criminal

The Statewide Forensic Service provides a residential treatment facility. The Act provides various protections for people who have treatment in this service, including specification of admission criteria,

the requirement for a treatment plan, leave provisions, and review of the treatment plan by VCAT.



Checklist for boards

- Have you addressed risk management issues relating to any supervised treatment orders involving your organisation?*

Sources of further information about good governance

General

- National Disability Services www.nds.org.au
- Information Victoria www.bookshop.vic.gov.au
- Australian Securities and Investments Commission provides information on companies, fees, payments and complying with the law www.asic.gov.au
- Cooperatives (Cooperative Act 1996) and Associations (Associations Incorporation Act 1981): Consumer and Business Affairs Victoria www.consumer.vic.gov.au
- CPA Australia www.cpaaustralia.com.au

Australian management resources online

Boardworks International: provides consultancy services, but has some board resources free online.
www.boardworksinternational.com

Non-profit Governance and Management Centre: offers a range of governance and management related publications for sale, and subscription-based board information newsletter.
www.governance.com.au

Our Community: offers subscriptions to newsletters and a range of free information online directed to community organisations.
www.ourcommunity.com.au

Sources of further information about the Disability Act 2006

'Disability Act 2006: A guide for disability service providers', Department of Human Services, 2006. Downloadable from DHS website www.dhs.vic.gov.au/disabilitysite

'Disability Act 2006 Information Sheets', Department of Human Services, 2006. Downloadable from DHS website: www.dhs.vic.gov.au/disabilitysite

This resource document has been prepared by NDS Victoria with input from the Good Governance Reference Group, comprising board members from 15 disability service providers, and representatives from the Department of Human Services and DISTSS, Disability In-Service Training and Support Services. NDS wishes to thank all members of the Reference Group for their contribution.

About National Disability Services

NDS is the national peak body for disability services. Its membership includes more than 600 not-for-profit organisations that collectively operate several thousand services for Australians with all types of disabilities.

In seeking to achieve its purpose, NDS provides a wide range of advice and information to the disability services sector through a monthly newsletter, news faxes, email networks, conferences and seminars. Its consultative structures include a system of issues-based national committees and State sub-committees, forums and interest groups

that operate by correspondence/email, teleconferences and face-to-face meetings. NDS's submissions to government are developed in consultation with its members.

NDS provides advice to governments regarding all significant disability matters. It is currently represented on almost 20 Australian government (or quasi-government) reference groups, working parties and advisory groups, and on numerous State and Territory committees.

Visit the NDS website: www.nds.org.au

About DISTSS

DISTSS (Disability In – Service Training Support Service Incorporated) is a not for profit non government organisation that provides innovative and high quality resources and services to facilitate ongoing learning and organisational development.

Our vision is an Australia where all people with disabilities have choices in regard to their participation, citizenship and leadership in an inclusive society where there is ready access to

appropriate supports provided by a thoroughly skilled, well resourced and professional workforce.

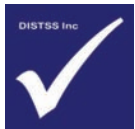
Our core business is to enhance learning and development practice within community service organisations and for profit enterprises to optimize outcomes for people with a disability.

For more information on DISTSS please visit our website at www.distss.org.au



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