

## **Response to “A New Act to Replace the Disability Services Act 1986” Consultation Paper**

### **Objectives of the Act**

#### ***Question 1: Do you agree with the proposed objects for the new Act? What other objects should be included in the new Act?***

VMIAC agrees with the proposed objects for the new Act but highlight several considerations for Government with enforcement of the new Act.

We recommend the following points are made a priority by Government in their oversight of service provision under the Act:

1. We suggest objective b) of the Act includes a definition of “social and economic participation” that reflects the Social Model of Disability and asserts that any failure by disabled people to ‘integrate’ into the community and ‘participate’ in a social and economic capacity is the direct consequence of societal barriers, as opposed to the fault of the individual. This would signify a necessary shift towards person-centred legislation and care, and therefore a departure from the Disability Services Act 1986.
2. We urge the government to consider peer-led and -centred supports and educational opportunities as intrinsic to the definition of “meaningful opportunities for employment, education, and development” in objective c) ii. This is consistent with Education and Learning Priority 3 and 4 of Australia’s Disability Strategy 2021-2031 which aims to improve the pathways and accessibility for people with disability to further education and increase opportunities for accessible and inclusive learning.
3. We recommend the addition of two further objectives to better reflect the commitments that Australia has made under the CRPD:
  - a. *Reaffirm the right of all people to legal capacity, as distinct from mental (or decision-making) capacity, and ensure that the difference between these two concepts is articulated in the definitions of the Act.*
  - b. *Ensure that supported decision-making is foundational in the Act, to better protect the right to legal capacity. This should occur even in circumstances where the person lacks mental capacity – most people are able to make decisions when they receive the appropriate support to do so, even in circumstances where they may lack the mental capacity to make such decisions independently.*

## **Who will the new Act support?**

### ***Question 2: Do you agree with the proposed approach to the target group? How do you think the target group should be defined?***

We support the application of the Social Model of Disability for the Act's definition of target groups. We recommend an adaptation of the UN CRPD's description of persons with disabilities that also highlights the attitudinal, environmental, institutional and communication barriers that contribute to a person's experience of disability.

We also recommend the inclusion of people who experience periodic disability, including those with psychosocial disability, in this new definition. This would acknowledge the role of both acute and chronic episodes of illness in the experience of psychosocial disability. This would also be consistent with Principle 4 of Australia's Disability Plan 2021-2031 which supports "Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity" (p. 53).

### ***Question 3: Do you agree with our suggested principles for avoiding duplication and requiring coordination? What other principles do you think should apply?***

The duplication principle assumes that services or supports will on their own meet the needs of the individual, making ancillary services or supports redundant.

Overwhelmingly, this has not been the experience of consumers engaging VMIAC; most consumers who access our advocacy services are dissatisfied with services or supports provided by one or more provider at a time, regardless of whether duplication occurs. If the duplication principle is to be enforced, there needs to be effective monitoring and oversight of these services or supports, to ensure they are meeting all their obligations to the individual as to the Act, UN CRPD and funding body.

We argue that the principles need to be clearer and better defined. Point b) does not place an obligation on services to work together, especially where the services being provided fall under the purview of a different Act. The avoidance of duplication will be contingent upon the interaction with other legislation, which in psychosocial disability, differs in each state. We also question how this coordination and lack of duplication will be enforced, given the differences in mental health legislation across states.

## **Definition of Disability**

### ***Question 4: Do you think the new Act should include a definition of disability? Do you have any additional comments?***

VMIAC strongly opposes the Act's adoption of an "exhaustive legal definition" such as that used in the NDIS Act as it is incompatible with the Social Model of Disability and makes no reference to societal factors and barriers as being major contributors to disability.

In line with the CRPD, we suggest a definition of disability that is inclusive rather than an exhaustive legal definition, such as, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which... may hinder their full and effective participation in society on an equal basis with others." (United Nations, 2008)

We agree with this definition because it is supportive of the social model of disability, non-exhaustive, and inclusive of certain groups and other types of disability that are not necessarily listed within the definition.

However, it is worth noting that its use of the phrase 'long-term' is not applicable to everyone with disability. We emphasise the inclusion of people who experience episodic and fluctuating disability in this definition. During episodic periods of psychosocial disability, a person's level of impairment and therefore their support needs may vary. This can dictate their eligibility for services and supports, including the NDIS. The Act needs to protect all people with disability. This will ensure a person's access to support, even at times when they may not meet eligibility for NDIS on the basis of having a permanent condition.

## **Quality and safeguarding arrangements**

### ***Question 5: How do you think quality and safeguarding arrangements should be managed by the new Act?***

As discussed previously, the duplication principle cannot be enforced without effective oversight and safeguarding. If it is to be enforced, a more streamlined approach to oversight and safeguarding would be required, meaning at the very least that the standards mentioned would need to operate together, not in tandem.

We question how safeguarding arrangements will be enforced within the current model. Appropriate safeguards are intrinsic to any disabled person's understanding and enjoyment of human rights and fundamental freedoms. This is consistent with the commitment in the Australia Disability Plan 2021-2031 to creating a Targeted Action Plan focused on improving safety. Current safeguarding measures are inadequate and fail to protect people with disability from harm.

We recommend the Act commits to the following actions by government:

- a. *Improve and streamline safeguards for people with psychosocial disability and monitor their enforcement by disability services.*
- b. *Support the elimination of restrictive practices on people with psychosocial disability and any practices which do not adhere to the UN CRPD and safeguards standards.*
- c. *Support people with psychosocial disability to understand their rights around mental health treatment; increase funding and visibility of services which support people with psychosocial disability.*

## **Types of services funded under the new Act**

### ***Question 6: Do you agree with the supports and services listed above? What other kinds of supports and services should be included in the new Act?***

We agree with the supports and services listed, and emphasise the importance of the following supports and services for people with psychosocial disability:

#### *Advocacy*

- a. *Peer-led and centred supports and services for people with psychosocial disability, including non-government programs and initiatives.*
- b. *Support lived experience workers to deliver training programs to social services and employment agency workers. This will enable workers to better meet the needs of people with psychosocial disability, improving outcomes for independence and social and economic participation.*

### *Employment and training:*

We consider the strengthening of the peer workforce intrinsic to the definition of “meaningful opportunities for employment, education, and development” in object c) ii. This is consistent with Education and Learning Priority 3 and 4 of Australia’s Disability Strategy 2021-2031 which aims to improve people with disability’s pathways and accessibility to further education and increase opportunities for accessible and inclusive learning.

- a. Support lived experience workers to deliver training programs to social services and employment agency workers. This will enable workers to better meet the needs of people with psychosocial disability, improving outcomes for independence and social and economic participation.*
- b. New and ongoing training and employment opportunities for people with psychosocial disability.*
- c. Opportunities for people with diverse and complex mental health to deliver training to communications professionals, including journalists, that informs respectful reportage of mental health and psychosocial disability and reduces harmful stereotyping and stigma.*
- d. Peer-led and centred supports and services for people with psychosocial disability, including non-government programs and initiatives.*

### *Information and education*

- a. Support for people with psychosocial disability to engage with mainstream education.*
- b. Increase funding for additional providers of the Certificate IV in Mental Health Peer Work, thereby improving access to education for people with psychosocial disability.*
- c. Internet and computer education. Many people with psychosocial disability experience challenges with using and navigating technologies and may benefit from computer education that is sensitive to the psychosocial experience of disability.*
- d. Support people with psychosocial disability to understand their rights around mental health treatment; increase funding and visibility of services which support the rights of people with psychosocial disability.*

### *Respite care:*

- a. Peer-led respites for people with psychosocial disability, including dual disability.*
- b. Accessible childcare. Childcare can be prohibitive and inaccessible, which can prevent people with psychosocial disability from seeking mental health care and respite.*
- c. Psychosocial recovery coaching/psychosocial support for non-NDIS participants*
- d. Peer-led services and supports: Opportunities for interpersonal connection and healing*

### **Additional feedback**

4. Historically, people with psychosocial disability have been excluded from conversations about disability and disability service design and this needs to change. To address this and to meet objective d) of the Act, Government must commit to conducting ongoing consultations with people with disability, including people with psychosocial disability, ensuring their feedback is implemented and sought for any reviews of service delivery. This is consistent with the Australia’s Disability Strategy’s role or responsibility to involve “all parties” (p. 34) in the development of policies and programs for people with disability.

5. VMIAC knows through our work alongside consumers that public awareness, understanding and acceptance of people with psychosocial disability is lacking in the broader community. To support objective e), we suggest the Government implement provisions in the Act that will legislate the following obligations to people with psychosocial disability:
  - a. *Delivery of peer-led campaigns that enhance public awareness, understanding and acceptance of people with psychosocial disability within the general community.*
  - b. *Historically, anti-stigma campaigns have given priority to the de-stigmatisation of more common psychiatric conditions such as depression and anxiety. The wider failure of campaigns to encompass more complex mental health experiences can lead to alienation of these communities and consequently, erasure of their experiences. We propose a commitment to the delivery of national anti-stigma campaigns that demystify and destigmatise the complex mental health experience.*
  - c. *Development of opportunities for people with diverse and complex mental health to deliver training to communications professionals, including journalists, that informs respectful reportage of mental health and psychosocial disability and reduces harmful stereotyping and stigma.*
  - d. *Delivery of targeted and region-specific campaigns addressing the experience of psychosocial disability by the most marginalised communities: First Nations and Torres Strait Islander communities, culturally and linguistically diverse communities, regional and rural communities, LGBTIQ+ communities.*
6. VMIAC recommends the strengthening of community support options for people with psychosocial disability without access to the NDIS.
7. VMIAC recommends that psychosocial recovery coaching be made accessible for non-NDIS participants.
8. Appropriate safeguards are intrinsic to any disabled person's understanding and enjoyment of human rights and fundamental freedoms. This is consistent with the commitment in Australia's Disability Plan 2021-2031 to creating a Targeted Action Plan focused on improving safety. We suggest that object c) iii. embed a recognition by government that current/prior safeguarding measures are dismally inadequate and fails to protect people with disability from harm.
9. VMIAC recommends that the Act supports the elimination of restrictive practices on people with psychosocial disability and any practices which do not adhere to the UN CRPD and safeguards standards.

## References

© Commonwealth of Australia ([Department of Social Services](https://www.disabilitygateway.gov.au/document/3106)) 2021. *Australia's Disability Strategy 2021-2031*. Available at: <https://www.disabilitygateway.gov.au/document/3106> (Accessed 24 January 2023).

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