



Victorian Equal Opportunity  
& Human Rights Commission

# Social Inclusion and Victorians with a Disability

Submission to the Victorian Parliament's Family and  
Community Development Committee

7 March 2014

# SUBMISSION TO THE INQUIRY INTO SOCIAL INCLUSION FOR VICTORIANS WITH DISABILITIES

The Victorian Equal Opportunity and Human Rights Commission (Commission) welcomes the opportunity to make a submission to the Committee's *Inquiry into Social Inclusion for Victorians with Disabilities*.

The Commission believes that the participation of people with disabilities, their families and carers in society is critically important. People with disabilities should be able to participate in all areas of public life. They should be able to access universal services on an equal basis with others. They should be supported to reach their maximum potential in important areas of their lives through the provision of high quality, specialist services. Victorian equal opportunity and human rights laws support this position.

The human rights and social inclusion agenda are mutually reinforcing. A person cannot enjoy their human rights if they are socially excluded, and inclusion cannot occur in the absence of their human rights being observed.

The Victorian laws that govern work in this area are:

- the *Equal Opportunity Act 2010*, including the positive duty to eliminate discrimination. The objectives of the Equal Opportunity Act include to identify and eliminate individual and systemic discrimination and to promote and facilitate the progress realisation of equality. That Act recognises that discrimination can cause social and economic disadvantage, that access to opportunities is not equitably spread throughout society; and that the achievement of substantive equality may require making reasonable adjustments and taking special measures; and
- the *Charter of Human Rights and Responsibilities Act 2006*, which outlines rights of people with disabilities to, amongst other things, equality before the law, freedom of expression which includes the right to receive information, participation in public life and the right to protection of the family (including best interests of the child).<sup>1</sup> The Charter recognises that all people are born free and equal in dignity and rights, and that human rights belong to all people without discrimination.

We know from our complaints, education and research work that Victorian people with disabilities experience social exclusion on many fronts. For the purposes of this submission, the Commission will consider the ways the Victorian Government can support a rights-based social inclusion agenda by driving improvements in key areas, including: education, employment, public transport, access to social/cultural life (connectivity and participation), rights-based governance and inclusion, and consumer involvement.

The Commission also notes that while the National Disability Insurance Scheme (NDIS) will bring about positive change, it will not be a panacea for all the barriers people with disabilities face, and it will be important that safeguards are protected during the transition to and within the new system.

## 1. The Commission's interest

The Commission is an independent statutory body that has functions under the Equal Opportunity Act, the *Racial and Religious Tolerance Act 2001* and the Charter. Our

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<sup>1</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8,15,17,18.

functions include dispute resolution, providing education about human rights and equality of opportunity, promoting compliance with the laws, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission has a role in reporting to the Victorian Attorney-General on the operation of the Charter and, at the request of public authorities, conducting compliance reviews.

The Equal Opportunity Act and the Charter support social inclusion of people with disability by:

- prohibiting discrimination against people with attributes protected by the Act (such as disability) in areas of public life, including employment, education, and in the provision of goods and services, including public transport; and
- requiring public authorities to act in ways which are compatible with human rights and to properly consider relevant human rights when developing policy and delivering services.

Consistent with the Commission's obligations, this submission adopts an equal opportunity and human rights framework, and notes that both the Victorian State Disability Plan and the National Disability Strategy are linked to the mandate set out in Australia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD), which aims to:

“promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and... promote respect for their inherent dignity”.

### **An inclusive definition of disability**

For the purposes of this Inquiry, the Commission recommends the use of the definition of disability used in the Equal Opportunity Act to ensure that all people with disabilities are considered in the Inquiry.

The Equal Opportunity Act definition of disability is as follows:

- (a) total or partial loss of a bodily function; or*
- (b) the presence in the body of organisms that may cause disease; or*
- (c) total or partial loss of a part of the body; or*
- (d) malfunction of a part of the body, including—*
  - (i) a mental or psychological disease or disorder;*
  - (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; or*
- (e) malformation or disfigurement of a part of the body—*  
*and includes a disability that may exist in the future (including because of a genetic predisposition to that disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability.<sup>2</sup>*

The definition of disability in the Equal Opportunity Act is inclusive and aligns with the international definition of disability used in the preamble to the CRPD, which recognises:

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<sup>2</sup> *Equal Opportunity Act 2010 (Vic) s 4.*

*...that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.*<sup>3</sup>

In the context of provision of services, there are other laws and policies in Victoria that include definitions of disability, such as the *Disability Act 2006*, and funding guidelines for the Program for Students with Disabilities. However, we submit that the definition of disability under the Equal Opportunity Act is more appropriate for a consideration of social inclusion. More limited definitions are geared to allocating resources and contain inbuilt limitations. As a result, people with disabilities in Victoria experience inconsistent and inflexible access to supports due to the reliance on diagnostic categories when apportioning services, rather than function-based assessment on individual needs. As such, funding structures and resource allocations based on more limited definitions of disability often do not support all people with disabilities who require support and who enjoy protection from discrimination under the Equal Opportunity Act, the Charter and international human rights obligations.

## **2. Social inclusion as a human rights legal obligation**

Social inclusion is both desirable, economically necessary and aligns with human rights obligations protected by domestic and international law. In particular, the legal requirements in the Equal Opportunity Act and the Charter support social inclusion.

### **Equal Opportunity Act**

This legislation recognises both direct and indirect discrimination on the basis of disability (as defined above). It outlines actions and remedies to address and prevent discrimination.

Discrimination is treating someone unfavourably based on a protected attribute (characteristic) such as age, race, disability or sexual orientation. Discrimination is unlawful if it occurs in an area of public life including employment, sport, education, provision of goods and services and accommodation.

*Direct discrimination* is treating or proposing to treat a person with an attribute unfavourably because of that attribute. For example, denying a person with mental health disability a job because of the stereotype that they may be risk to the organisation or may spend too much time attending medical appointments.

*Indirect discrimination* can happen when a requirement, condition or practice is imposed or proposed that is not reasonable and has or is likely to have the effect of disadvantaging a person with an attribute. For example, requiring a person use a standard computer without modifications may be indirect discrimination against a person with a vision disability who might easily be able to perform the job with reasonable modifications.

The law also requires the accommodation of people with disability in areas of public life through *reasonable adjustments*. The duty to provide reasonable adjustments is a 'stand alone' provision in the Equal Opportunity Act. That is, a person making a complaint does not have to prove direct or indirect discrimination, they only have to show that reasonable adjustments were not made for them in an area of public life.

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<sup>3</sup> *Convention on the Rights of Persons with a Disability*, opened for signature on 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) preamble (e).

Section 15 of the Equal Opportunity Act requires duty holders to take reasonable and proportionate measures to prevent discrimination, sexual harassment and victimisation as far as possible (*the positive duty*). To meet the positive duty, duty holders (such as Victorian Government departments) must consider the drivers of discrimination and take steps to address them and not just respond to complaints that arise.

An employer or principal will be liable for unlawful discrimination unless it can show that the organisation has taken reasonable precautions to prevent the employee or agent unlawfully discriminating.

### **Charter of Human Rights and Responsibilities Act 2006**

Like the CRPD, the Charter treats people not as objects of social protection but as subjects with rights and takes a person with a disability to be someone “born free and equal in dignity and rights.”<sup>4</sup> It places a duty on all Victorian public authorities to act compatibly with human rights and to take human rights into account when making decisions. It requires public authorities to consider whether their decisions and actions limit human rights and whether any limits are necessary and the least restrictive possible.

The Charter reinforces and gives life to the social inclusion through a number of legal obligations that public authorities must meet. Section 4 of the Act outlines the definition of a ‘public authority’ to include:

- entities established by legislation that have functions of a public nature
- entities that carry out functions of a public nature on behalf of a public authority, for example, public transport providers.

#### *1. Public authorities must act in ways that are compatible with human rights*

Public authorities, including Victorian government departments and agencies, and local governments, must consider human rights when they develop policies, deliver services and make decisions. Under section 38 of the Charter it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

#### *2. Human rights must be taken into account when developing new laws*

When introducing new laws into Victoria’s Parliament, a statement of compatibility that indicates how the proposed law meets the standards set out in the Charter must be tabled in Parliament. This helps Parliament consider the human rights impact of the laws it passes.

#### *3. Courts must interpret and apply all laws compatibly with human rights*

All Victorian laws must be interpreted in a way that upholds the human rights outlined in the Charter, as far as this is possible. Parliament has the final say in deciding what laws are in the best interests of the Victorian community.

## **3. Areas of significant exclusion**

The Commission acknowledges that people with disabilities experience multiple forms of discrimination and disadvantage across a range of areas. We also acknowledge that many people face multiple forms of systemic discrimination based

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<sup>4</sup> The Victorian Supreme Court in *Patrick’s Case* [2011] VSC 327 at [130]-[137] and [333] reflected on the paradigm shift in approach to people with a disability that was marked by the entry into force of the CRPD.

on intersectional identities, for example women with disabilities, people with disabilities who are ageing, young people with disabilities, Aboriginal and Torres Strait Islander peoples with disability and people with disability from culturally and linguistically diverse (CALD) backgrounds.

- In 2012/13, the Commission received 10,557 enquiries from 8,470 people. Disability was the largest attribute of enquiry, followed by race, sexual harassment, age, carer status and sex.
- The Commission accepted 1,054 complaints in 2012/13. Of these, disability discrimination in all areas was the highest attribute of complaint.<sup>5</sup>
- Complaints of disability discrimination have consistently made up the highest number of complaints received by the Commission over several years (compared to other attributes).<sup>6</sup>

For the purposes of this submission, we will focus on key areas of complaints the Commission receives under the Equal Opportunity Act:

- Education
- Employment
- Public transport
- Access to social/cultural life (connectivity and participation).

We will also consider the importance of rights-based governance and consumer involvement to a social inclusion or human rights agenda.

### **3.1 Education**

The Commission supports the focus in the first implementation plan for the Victorian State Disability Plan 2013-16 on better opportunities in education and early childhood development services.<sup>7</sup>

We also support the focus on equitable access to education for people with disabilities as a necessary foothold to full social inclusion, including in employment.

In 2012-2013, the Commission received 88 complaints of disability discrimination in education.<sup>8</sup>

In 2012, the Commission published a report entitled *Held Back: the experience of students with disabilities in Victorian schools* examining the experiences of students with disabilities in Victorian schools.<sup>9</sup> The Commission heard from over 1,800 students, parents and educators to find out how students with disability fare in the Victorian school system. The report notes that:

Through their experiences at school, children and young people learn about themselves and the world in which they live, as well as developing the skills and competencies to prepare for further study and work. A good education provides the foundation that supports children and young people to be active participants in their communities, find fulfilling work and live a decent life.

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<sup>5</sup> Victorian Equal Opportunity & Human Rights Commission, *Annual Report 2012-13* (2013) 4.

<sup>6</sup> Ibid 43.

<sup>7</sup> Victorian Department of Human Services, *Victorian State Disability Plan 2013-2016: First implementation plan 2013 and 2014* (2012) 7.

<sup>8</sup> Victorian Equal Opportunity & Human Rights Commission, above n 5, 42.

<sup>9</sup> Victorian Equal Opportunity & Human Rights Commission, *Held Back: the experience of students with disabilities in Victorian schools* (2012).

When students with disabilities are unable to enjoy a good education, their future is seriously compromised.

A poor education is one of the key reasons why the economic and social participation rate of Australians with disabilities is so low. People with disabilities are less likely to have completed Year 12 and are less likely to hold a post-school qualification. They are also more likely to be unemployed and have significantly less income than others in the community. Indeed, 45 per cent of Australians with disabilities live in, or near, poverty.<sup>10</sup>

The Held Back report found that discrimination for students with disabilities in education is experienced on individual and systemic levels. The research found that 53 per cent of parents reported their children were not able to full participate in education.<sup>11</sup> Notably, experiences of discrimination were exacerbated for students with disabilities from CALD backgrounds and Aboriginal and Torres Strait Islander students.

A copy of the Held Back Report, which includes key findings, can be found at **Attachment A**.

The Commission supports many of the strategies included in the first Implementation Plan for the State Disability Plan 2013-16 and welcomes steps DEECD have made to respond to recommendations made by the Held Back report.<sup>12</sup> These include the establishment of a Senior Officer's Group within DEECD to progress these matters.

The Commission also welcomes the rollout of the Department's online professional learning resource for school leaders and all school staff on *the Disability Discrimination Act 1992* and the Disability Standards for Education. This has now been taken up by over 20 per cent of Government schools and it is intended that by 2015 all Victorian schools will have accessed this course.

However, despite some progress, many Victorian children with disability still face significant barriers when trying to access education. This is a serious infringement of their human rights, and works against social inclusion.

The Commission strongly encourages all future Victorian policy platforms for education for students with disabilities to seriously consider the key recommendations in the Commission's Held Back report with the aim of addressing the very real barriers experienced by students with disabilities to accessing quality education and social inclusion.

Three key issues raised in the Report of relevance to the social inclusion inquiry, include the unacceptable use of restraint and seclusion for children with disabilities in Victorian schools, as well as the issues of part-time attendance and suspension and expulsion, leading students with disabilities to miss out on fully participating in education.

## **Restraint and seclusion**

The Held Back Report noted that:

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<sup>10</sup> Ibid 8.

<sup>11</sup> Ibid 37.

<sup>12</sup> Victorian Equal Opportunity & Human Rights Commission, *Held Back: the experience of students with disabilities in Victorian schools* (2013) <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/disability-in-schools>>.

- Thirty- four parents reported the use of restraint on their child at school and 128 parents reported that their child had been placed in ‘special rooms’.
- 514 educators reported having used restraint. Over half said they were inadequately trained to deal with this situation.
- A number of circumstances describing the use of restraint and seclusion described to the Commission by parents and educators would constitute a breach of the Charter and the Equal Opportunity Act.
- There is no independent oversight or monitoring of the use of seclusion and restraint in Victorian schools. There is no official data on how frequently these practices occur in schools, why they are used or their impacts.<sup>13</sup>

The use of restraint and seclusion infringes on children’s human rights and also constitutes discrimination in many circumstances. On an individual level, restraint and seclusion serve to humiliate and exclude children with disabilities in a school environment. On a systemic level, restraint and seclusion are a result of failures in policy and practice that prevent children from accessing and participating equally in education and in the social and community benefits of education on an equal footing.

### **Part-time attendance**

In relation to part-time attendance, the Held Back Report noted that:

- Even though the law requires all students who are enrolled to attend school full-time, some schools do not allow some students with disabilities to come to school full-time.
- Fifty-two parents reported part-time schooling. While this is a small number of students, education authorities must proactively address this serious matter.
- In some cases, students are only allowed to attend during the hours that a funded integration aide is available. In other cases, the student may be put on part-time attendance following behaviour problems that have not been well-managed.<sup>14</sup>

### **Suspension and expulsion**

In relation to suspension and expulsion, the Held Back Report noted that:

- Information about suspension and expulsion of students with disabilities is not collected or reported by DEECD, the Catholic system or Independent schools. This makes it difficult to understand and fix the problem.
- However, our survey suggested that some students with disabilities are suspended multiple times or expelled, nearly always in connection with behaviour-related issues. These students are likely to end up home schooled, in distance education or out of education all together.<sup>15</sup>

As well as the issues noted above, the Victorian Government has recently announced changes to policies on suspension and expulsions (*Ministerial Order 625: Procedures for suspension and expulsion* and the new *Student Engagement and Inclusion Guidance*).

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<sup>13</sup> Victorian Equal Opportunity & Human Rights Commission, above n 9, 105.

<sup>14</sup> Victorian Equal Opportunity & Human Rights Commission, above n 9, 93.

<sup>15</sup> *Ibid.*

The Commission welcomes the opportunity of consulting with DEECD on its Guidance notes supporting the new Ministerial Order. We are providing assistance on the obligation of schools to meet the legal requirements of the Equal Opportunity Act and the Charter in relation to children with disabilities. We are working closely with DEECD in an attempt to implement these safeguards. The Commission has also recommended a range of safeguards to ensure that children with disability are not discriminated against further by the changes in policy, including the need to collect data to be able to identify trends around the suspensions and expulsion of vulnerable cohorts.

Despite this consultation, we continue to be concerned about the impact of a changed process that makes it easier for principals to suspend and expel students, recognising that children with disabilities may be more significantly impacted.

Concerning changes to the policy include:

- that student support groups are no longer mandatory when considering expulsion;
- changes to the way unacceptable behaviour is defined, which broadens the range of behaviours which may be considered when making a decision about expelling a student.

The Commission notes that children with disabilities are one of a number of vulnerable groups that are likely to be over-represented in suspensions and expulsions alongside Aboriginal and Torres Strait Islander students, and students living in out-of-home care. It is feared that the new policy may have the effect of further disadvantaging children with disabilities.

### **3.2 Employment**

People with disability still experience significant barriers to full participation in employment. The Commission is aware that the participation rate in employment for people with disability is only 40 per cent, compared with the general population, which is 80 per cent.<sup>16</sup> The participation rates in employment for people with mental illness within the disability population are notably less.<sup>17</sup>

In 2012-2013, the Commission received a total number of 344 complaints in the area of employment based on the attribute of disability.<sup>18</sup> This represents the largest percentage of complaints received by the Commission in the area of employment (19 per cent) compared to other attributes in Act.

The Commission has published a guideline for employers and recruiters entitled *Guideline for the recruitment industry and employers: Complying with the Equal Opportunity Act 2010 in recruitment*.<sup>19</sup> The aim of this guideline is to ensure that people with disabilities do not experience discrimination at different stages of the recruitment process, such as during advertising, short-listing or interviewing.

The Commission is currently finalising a guideline to guide employers about their obligations under the Equal Opportunity Act in relation to workers with mental health

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<sup>16</sup> Victorian Department of Human Services, *Victorian State Disability Plan 2013-2016 (2012)* 13.

<sup>17</sup> Victorian Family & Community Development Committee, *Inquiry into Workforce Participation by People with Mental Illness* (2001) 4.

<sup>18</sup> Victorian Equal Opportunity & Human Rights Commission, above n 5, 43.

<sup>19</sup> Victorian Equal Opportunity & Human Rights Commission, *Guideline for the recruitment industry and employers: Complying with the Equal Opportunity Act 2010 in recruitment* (2012) <<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/eoa-practice-guidelines/item/515-guideline-for-the-recruitment-industry-and-employers-complying-with-the-equal-opportunity-act-2010-in-recruitment>>.

disability. This is an area where much uncertainty about employer obligations and worker responsibilities under anti-discrimination laws exists.

These projects support the State Disability Implementation Plan's focus on building employer and community awareness about the strengths of employing and retaining people with disabilities.

The Commission commends the Victorian State Disability Plan Implementation Plan's aim to build work awareness and work readiness among young people with disability, support trainers to improve outcomes for people with disability and promote employment opportunities through the Business Victoria website. The Commission also supports the Implementation Plan's commitment to work toward improving the Victorian public sector's capacity to employ, retain and offer professional development opportunities to people with disabilities.<sup>20</sup>

The Commission notes that people with disability continue to be under-represented in the Victorian public sector workforce.<sup>21</sup> However, the Commission notes that current indicators within the Implementation Plan in the area of employment are limited to: (1) the proportion of people with a disability of working age who are in the labour force and (2) the proportion of students with a disability employed after completing a vocational training course.<sup>22</sup>

This is an area where the Victorian Government could show stronger leadership by setting clearer benchmarks for recruitment and retention of people with disabilities within the Victorian Public Service, including targeted recruitment, allocating identified graduate positions and consideration of quotas for the employment and retention of people with disabilities in Victorian Government Departments.

### **3.3 Public transport**

Planning the design of the physical environment and transport systems that enable people with a disability to live, work and move around is key to social inclusion.

Improving access to public transport is not only about improving participation in employment opportunities, goods and services, education, social and cultural life – it is ultimately about improving a person's quality of life and upholding their right to equality.

Although the Victorian Government's response to the 2007 review of the Disability Standards for Accessible Public Transport (DSAPT) reported that "Victoria exceeded or met most requirements of the first milestone on 31 December 2007 for trains, stations, buses, and bus stops", the experience of the Victorian community is that most public transport is still not wholly accessible for people with disabilities.

The Commission notes that the Victorian Government has reported that the 2012 DSAPT milestones for buses and trams have not been met.<sup>23</sup>

In 2012-2013, the Commission received a total of 223 complaints by people with disability in the area of access to goods and services (which includes access to transport).<sup>24</sup>

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<sup>20</sup> Victorian Department of Human Services, above n 7, 17.

<sup>21</sup> "Approximately four per cent of employees reported an ongoing disability, compared to six per cent of the Australian workforce with a disability that restricts employment (ABS Cat No. 4446.0)". State Services Authority, *Factsheet: profile of the Victorian Public Sector Workforce at June 2013* (October 2013) < <http://www.ssa.vic.gov.au/products/view-products/fact-sheet-profile-of-the-victorian-public-sector-workforce-at-june-2013.html>>.

<sup>22</sup> Victorian Department of Human Services, above n 17, 17.

<sup>23</sup> State of Victoria, *Accessible Public Transport in Victoria: Action plan 2013-17* (2014) 13.

In May 2013, the Commission conducted a survey for transport users with disabilities to inform the Commission's submission to the 2012 review of DSAPT.

The findings, although limited by a small sample size,<sup>25</sup> show that there has been a decline in accessibility for people with disability in respect of train services and taxi services over the last year.<sup>26</sup>

The responses showed that significant barriers to equal access to public transport for people with disabilities remain. Key findings from the survey include:

- the majority of respondents thought that public transport had not improved over the past year
- barriers to access exist on all forms of public transport and taxi services. Some of these barriers could constitute direct discrimination, such as a taxi driver refusing to accept a fare because the respondent had an assistance dog. Also of particular concern are those barriers that threaten safety, such as insufficient awareness and knowledge among taxi drivers about how to install safety harnesses and large gaps between trams and superstop platforms.
- many respondents reported experiencing long waits for taxi services
- improvements to access are welcome but may be limited by other infrastructure or the service that exists around them. For example, accessible trains do not create accessible transport if a person in a wheelchair cannot access the train platform, if transport staff forget or refuse to deploy the portable ramp, or if the footpath/kerb outside the train station is not accessible.<sup>27</sup>

These findings highlighted the need to understand accessible public transport in terms of an independently accessible journey.

A copy of the report, *Who's on Board? Public transport for people with disabilities in Victoria*, which includes key findings, can be found at **Attachment B**.

The Commission's submission to DSAPT supported the removal of barriers along all points of the travel trip, and encouraged a focus on solutions that ensure people with disabilities have equal and fair access to public transport. The Commission supports a greater focus on creating a continuous accessible path of travel for people with disabilities, and is of the view that this should complement, not replace or reduce, the focus on minimum compliance with the DSAPT, particularly as the DSAPT requires key infrastructural change, including accessible platforms and fleets across the modes. We note that many changes, that could seriously enhance the experiences of people with disabilities who wish to access public transport, are easy and inexpensive and can happen quickly alongside a focused prioritisation on major infrastructure

The Commission is pleased to see that the *Accessible Public Transport in Victoria Action Plan's 2013-2017* (Public Transport Action Plan) aims to make public transport more accessible to people with disabilities.

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<sup>24</sup> Victorian Equal Opportunity & Human Rights Commission, above n 5, 43.

<sup>25</sup> The Commission received 160 responses to the survey. The survey relied on people with disabilities to voluntarily respond, resulting in a non-randomised or representative group.

<sup>26</sup> Victorian Equal Opportunity & Human Rights Commission, *Who's on Board? Public transport for people with disabilities in Victoria* (2013) 5.

<sup>27</sup> Ibid 19.

The Commission supports the Public Transport Action Plan's focus on active consultation and community engagement, which includes people with disabilities. In particular, we support the Public Transport Action Plan's commitment to regular consultation with people with disabilities around key barriers they face, including: tram and bus boarding, accessible toilets at railway stations and bus access.

We also support the whole-of-journey approach to public transport planning and delivery. The Commission believes that there must be greater emphasis on improving whole-of-journey accessibility outcomes for passengers with disability.

The Commission is pleased to see a commitment to improved data and reporting on key actions within the Public Transport Action Plan, including a commitment to publicly reporting annually over the life of the Plan.

The Commission also supports the key recommendations made by the Public Transport Ombudsman in the report, *Closing the Accessibility Gap*, in particular:

- the recommendation for industry wide training for all frontline staff on disability and how to communicate with people with disabilities in a respectful way;
- improvements to complaint resolution;
- the provision of accessible information about boarding public transport to people with disabilities;
- implementing best practice standards on making public announcements in consultation with people with disabilities;
- provision of an updated guide to myki basics in an accessible format; and
- implementing accessible design into public transport infrastructure.<sup>28</sup>

## **Taxis**

The Commission notes the significant work currently being done to implement the recommendations stemming from the In relation to Fels' Inquiry into the Taxi Industry and is working with the Taxi Services Commission to ensure that the reforms address the experiences of discrimination experienced by people with disabilities using taxi services.

The Commission's focus in this work includes a focus on addressing the unacceptably long wait times for wheelchair accessible taxis, as well as poor service standards. The Commission is working with the Taxi Services Commission to assist in developing options for a new Central Booking Service as a means of ensuring that Wheelchair Accessible Taxis are available for people with disabilities as a priority.

The Commission is also focused on related issues, including whether the Taxi Services Commission meet its positive duty under the Equal Opportunity Act by ensuring that it can adequately monitor drivers that discriminate against people with disabilities by refusing to accept jobs.

In addition, the Commission has raised concerns about the eligibility criteria for the Multi Purpose Taxi Program.

The Multi Purpose Taxi Program (MPTP) provides subsidised taxi fares for Victorians with severe and permanent disability who also experience financial hardship.

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<sup>28</sup> Public Transport Ombudsman Limited, *Closing the accessibility gap* (2013) 8-9.

The Commission is concerned that the requirement that an applicant demonstrate financial hardship imposes an economic disadvantage on many people with a disability who are employed but lack alternative transport options.

We have noted that the current MPTP means test creates a barrier to employment for some people with disability who could work if they could access subsidised taxis but do not do so as the expense of getting to and from work using this mode is prohibitive.

The Commission continues to encourage the use of economic modelling to determine the costs and benefits of raising the MPTP means test so as to facilitate employment for people with disability.

### **3.4 Access to social/cultural life (connectivity and participation)**

Participation in all aspects of community life, including having a social life, is critical to leading a full and productive life. It is something that most Victorians take for granted. However, for many people with disability, this is not the case.

In 2012-2013, the Commission received a total of 223 complaints by people with disability in the area of access to goods and services, a total of 19 complaints in the area of access to premises and one complaint in relation to accessing clubs. Access to goods and services relies on a range of factors, including physical access, the ability to communicate, and even the ability to toilet with dignity.

Although there are many barriers that exist to people with disabilities experiencing full access to social and cultural life, this submission will highlight three key areas of concern.

- Access to recreation
- Dignity when in public areas
- Communications access.

#### **Access to recreation**

Building the capacity of sport, recreation and cultural industries to include people with disabilities is a very welcome focus through the State Disability Plan.

The Commission has recently completed the first phase of a project to examine the accessibility of businesses (including retail shops and restaurants) to people with a disability. Interviews with shop owners located along Lygon street, Carlton and Swanston street in the Melbourne central business district were conducted.

Our discussions with retail and restaurant businesses revealed a number of perceived barriers to inclusion. Front line staff and managers told us that these barriers included:

- fear of cost
- difficulties around ownership (for example, City of Melbourne or landlord's responsibility)
- lack of practical guidance on how to make changes
- lack of knowledge about legal obligations (under the Equal Opportunity Act or the Charter) to persuade compliance
- unwillingness to make changes or disregard for the consequences of non-compliance.

Based on this research we are currently developing an on-line accessibility toolkit for businesses across Victoria. This should be available in late 2014.

## **Dignity when in public areas**

While most people can access private and dignified toileting in public places, standard accessible toilets do not always meet the needs of people with disabilities. People with spinal injuries, spina bifida, motor neurone disease, multiple sclerosis or an acquired brain injury, often need extra facilities to allow them to use toilets comfortably. Often families and carers have no choice but to change their loved ones on the floor of a public toilet.

Changing Places toilets are facilities with extra features and space that meet the needs of people with disabilities. Each Changing Places toilet provides: a height adjustable adult-sized changing bench, a tracking hoist system, enough space and a safe and clean environment.

A consortium has been formed in Victoria led by Association for Children with Disability (ACD) to promote these facilities in key locations including transport hubs, shopping centres, cultural and sporting venues.<sup>29</sup>

Changing Places have been rolled out in the UK. There is a clear role for the Victorian Government to facilitate the rollout of these facilities in key public places, including major transport hubs and public places, in public buildings, and to ensure the use of mobile Changing Places as a contracted deliverable for major events, including key sporting events, arts festivals and other public events.

## **Communication access**

One in 500 people in Victoria have communication disabilities.<sup>30</sup> Many of these people use assisted and augmented communication, including the use of electronic supports for speech, such as lightwriters or communication boards.

Barriers created by an inability of services to communicate with people with communications disabilities can result in a range of discrimination, resulting in poor outcomes for people with disabilities, for example, barriers to accessing goods and services (including taxis), and poor health outcomes as a result of inequity in accessing health care.

In 2009, Scope's Communication Resource Centre led the development of a symbol for use by organisations that are accredited for Communication Access. The key purpose of Communication Access accreditation is to ensure that people with disabilities can engage with communities and services where:

- “- People communicate directly with them
- They are given time to get their message across
- They can use the method of communicating that is suitable for them.”

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<sup>29</sup> The consortium has developed a Changing Places Information Kit for people and organisations that may be involved in building a Changing Places toilet. It includes specifications etc. It is based on the UK experience when Changing Places are now much more common. A copy of the kit and more information is available at <http://www.disabilityaccessconsultants.com.au/changing-places-toilets-new-information-kit/>.

<sup>30</sup> Scope, *Communication Access – Introducing the newest access symbol within Australia* (19 August 2011) <[www.scopevic.org.au/index.php/site/mediacentre/pressreleases/communicationaccesssymbol](http://www.scopevic.org.au/index.php/site/mediacentre/pressreleases/communicationaccesssymbol)>.

To display the Communication Access Symbol, places, businesses and services must undertake an audit and meet specific criteria for communication access.<sup>31</sup>

There is a role for the State Government in promoting best practice in communication accessibility, including undertaking audits of government services and taking action to attain the communication access symbol and to incorporate it into program and service delivery as part of universal access requirements. For example, Government services with public interaction, such as Department of Human Services office receptions, and Consumer Affairs query centres, should seek accreditation.

### 3.5 Right to family

Meaningful social inclusion can only be achieved by also recognising the value and role that families and carers have in supporting people with a disability, this includes providing opportunities for respite and other forms of support to help carers in their caring role of family members who have a disability.<sup>32</sup>

In 2012, the Commission published a report entitled, *Desperate Measures: the relinquishment of children with disability into state care in Victoria*, which examined the relinquishment of children with disability into state care.

The Commission's research found that 50 or more Victorian families surrender the day-to-day care of their child with disability to the state each year because they cannot access the support they need to continue caring full time.<sup>33</sup>

We found the impacts of relinquishment to be profound – children and families experience trauma, grief, fear and confusion. Children spend weeks, months and sometimes years in inappropriate and unstable accommodation, such as respite centres and transitional houses. Most importantly, they are separated from families who love them and want to continue to care for them if they have the support to do so. Children with disabilities are significantly over-represented in out-of-home care.<sup>34</sup>

This denies the human rights of children and families at both domestic and international law, particularly the rights to the protection of the family and protection of children. It also places an additional, unplanned and preventable burden on the child protection and disability systems – systems that already struggle to meet demand.

The Commission made 28 recommendations in the *Desperate Measures* report around the following action areas:

- Data collection and reporting
- Risk identification
- Prevention
- Early intervention
- Response

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<sup>31</sup> Ibid.

<sup>32</sup> Victorian Equal Opportunity & Human Rights Commission, *Submission to the Draft Victorian State Disability Plan 2013-16* (July 2012).

<sup>33</sup> Victorian Equal Opportunity & Human Rights Commission, *Desperate measures: the relinquishment of children with disability into state care in Victoria* (2012) 6.

<sup>34</sup> Ibid 7. In June 2011, there were 4,064 children living in out-of-home care in Victoria, excluding those on permanent care orders. Those not in permanent care live in family-based placements, kinship or foster care, residential care, secure units or in contingency arrangements. Of these 4,064 children, 579 have a disability. Children with disabilities are significantly over-represented in residential care, particularly. Around 20 per cent of children in residential care are considered by DHS Children, Youth and Family Services (CYFS) to have a disability. This is significant, as only 11 per cent of all children in care are in residential care.

- Supporting families
- Protecting rights (including the introduction of a proactive and independent community visitor and advocacy scheme to monitor and inspect respite, transitional house and other settings where children with disability are placed)
- Shared responsibility and accountability.

A copy of the Desperate Measures report can be found at **Attachment C**.

The Commission is now working with government departments, community stakeholders and families to see the recommendations implemented, and would welcome further prioritisation across government to implement the critical recommendations contained in the report, noting that the Commission continues to receive reports of relinquishment. The Commission understands that in November 2013, 30 children with disabilities aged under 18 years were living in extended respite (that is, longer than 28 days).

The number of relinquished children living in transitional housing or other forms of temporary accommodation is currently not publicly reported, however Community Visitor Annual Reports continue to identify children in these settings, as well as children living long-term in respite facilities.<sup>35</sup>

#### **4. Achieving inclusion is dependent on rights-based governance**

Human rights, including freedom from discrimination, are crucial to achievement of social inclusion for people with disabilities. Accordingly, a human rights-based model of governance and planning, policy development and service delivery is best-placed to deliver positive outcomes for people with disabilities. This requires a focus on inclusion across universal settings and service platforms, as well as targeted effort in places and with people who have experienced great discrimination and disadvantage, such as people with disabilities, including those experiencing multiple disadvantage.

People with disabilities experience social exclusion on a range of fronts, and at both the systemic and personal level. For this reason, social inclusion must be driven by whole-of-government, whole-of-community approaches where people with disabilities are positioned to drive and shape the social inclusion agenda, both in policy and in practice.

##### **Consumer control and the role of self advocacy**

Meaningful inclusion and consumer involvement must acknowledge the significant difference between participation in an existing system, and in driving any system change and reform.

Contemporary human rights frameworks support a rights-based, empowerment model, in which people affected by decisions are involved in the decision-making process, in the implementation of decisions and in their evaluation.

Social inclusion and consumer control by people with disabilities relies on active and engaged advocacy and self-advocacy bodies.

The need for effective and entrenched systems of advocacy is especially pertinent in the development of new systems, and where there is the potential for inadequate oversight of new or existing service systems.

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<sup>35</sup> Office of the Public Advocate, *Promoting the human rights, interests and dignity of Victorians with a disability or mental illness: Community Visitors Annual Report 2012-13* (2013) 16.

The Commission supports the comments made in the recent Disability Advocacy Network Australia's (DANA's) pre-budget submission, on the need for certain and ongoing support for advocacy under the NDIS system. DANA noted that:

“The unmet demand for advocacy services is increasing. Disability advocacy ...:

- ...is vital to protecting and advancing the human rights and wellbeing of Australians with disabilities
- ...is necessary for ongoing quality assurance and systemic improvement of the NDIS and other service systems, and contributes to the economic efficiency of government spending”.

The Commission supports DANA's position that the state and federal Governments should undertake a review of need and demand for disability advocacy. The Commission also supports DANA's assertion that “Disability advocacy support should ... remain independent and accessible for all people with disabilities”.<sup>36</sup>

## 5. Conclusion

A social inclusion agenda is a human rights agenda. Although Victoria has achieved some important steps in the direction of social inclusion there are still significant systemic failures that persist and work to exclude many Victorians with disabilities from full participation in the Victorian Community.

This submission has aimed to:

- highlight how Victoria's equal opportunity and human rights law support social inclusion
- highlight key areas of required focus based on past experience of discrimination and human rights breaches
- highlight areas of good practice and opportunity for future focus.

Thank you for the opportunity to make this submission. The contact officer for this submission is Wendy Sanderson, Senior Advisor Strategic Projects. She may be contacted on [wendy.sanderson@veohrc.vic.gov.au](mailto:wendy.sanderson@veohrc.vic.gov.au)

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<sup>36</sup> Disability Advocacy Network Australia, *Funding disability advocacy: an economic and human rights imperative 2014-15 Pre-budget submission to the Department of Treasury (2014)* <<http://www.dana.org.au/wp-content/uploads/DANA-Pre-Budget-Submission-2014-15.pdf> >.