

Community Visitors Protocol

Between:

The Office of the Public Advocate – Community Visitors (Disability Services) Program
The Department of Human Services – Disability Services Division
National Disability Services (Victoria)

21 October 2009



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Preamble

This protocol has been developed by, and for, the Department of Human Services (the department) Disability Services Division, the Office of the Public Advocate (OPA) Community Visitors Program (CVP) and National Disability Services (NDS) Victoria. A departmental-CVP protocol was first developed in 2001 to coincide with the expansion of Community Visitors' responsibilities to visit residential services provided by community service organisations. The protocol was revised in 2007 after the commencement of the *Disability Act 2006* on July 1 2007, and again in 2009 to incorporate further changes agreed to by the signatories.

Accessibility

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Introduction

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

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

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

This protocol was executed on 21 October 2009

by



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and



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1 Background and context

1.1 Key terms

Community Visitors

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

The Community Visitors Program (CVP)

The Community Visitors Program is the organisational structure through which Community Visitors are appointed and perform their functions under the Disability Act. The legislative authority of Community Visitors is described by the Disability Act.

The Office of the Public Advocate

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

The Department of Human Services

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

National Disability Services Victoria (NDS)

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

Register of Disability Service Providers

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

Disability Service Provider

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

Community Service Organisation

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

Disability Accommodation Services (DAS)

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

The Minister

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

The Disability Act 2006

The *Disability Act 2006* is the legislation that reaffirms and strengthens the rights and responsibilities of people with a disability. It provides the legislative structure and definition of the Community Visitors for Disability Services. Specific sections in the Act that refer to Community Visitors are sections 3, 28-36, 57, 129-132. The department administers the Disability Act, supported by the Department of Planning and Community Development.

Community Visitors Board

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

Regional Convenors

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

Further terms are defined in the Glossary of terms in Section 3.

1.2 The functions of a Community Visitor

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

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

1.3 Visits to residential service premises

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

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

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

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

1.4 Residents requesting a visit

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

The Disability Act requires that the disability service provider advise the Community Visitors Board of the request within 72 hours of receiving it. The board must respond within seven days of receiving the request. If the board considers it appropriate, it may arrange for the Public Advocate to respond to the request.

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

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

1.5 Access to residents' records and other related documentation

- In accordance with the provisions of the Disability Act (sections 39 and 130), Community Visitors are empowered to access information to fulfil the requirements of their role. Much of this information is of a personal or sensitive nature and is, therefore, confidential and should be maintained in accordance with legislative requirements, particularly the *Information Privacy Act 2000* and the *Health Records Act 2001*.
- Information gained by Community Visitors will only be used for the purpose of carrying out their responsibilities under the Disability Act. Community Visitors are entitled to inspect any document kept at residential premises of a registered disability service relating to any resident which is not a medical record, and any records required to be kept by or under the Disability Act, as part of their enquiries. This includes personal files, support plans, incident reports, and restrictive intervention and compulsory treatment reports.
- Community Visitors will only access personal information about a resident when it relates specifically to their enquiries. Access to personal information as part of the Community Visitor role will be exercised with sensitivity and the best interests of the resident will be regarded as paramount.
- Where possible, Community Visitors will communicate their role and intent with residents before accessing their files.
- Community Visitors may inspect a medical record relating to a resident with the consent of the resident or the consent of a person with legal authority to make medical decisions for the person, such as a guardian with authority for health care decisions.
- Community Visitors will only access medical records if it assists with their follow-up of a particular matter related to that person.
- If a person cannot provide consent and there is no legally appointed agent or guardian, then the *person responsible*, as defined by the *Guardianship and Administration Act 1986* (section 37), may provide consent.
- If there is no legally appointed agent or guardian the *person responsible* should be identified in the following order of priority as:
 - the person's spouse or domestic partner
 - the person's carer, including carers in receipt of a Centrelink Carer's payment **but excluding paid carers or service providers**
 - the person's nearest relative over the age of 18, which means (in order of preference):
 - son or daughter
 - father or mother
 - brother or sister (including adopted persons and 'step' relationships)
 - grandfather or grandmother
 - grandson or granddaughter
 - uncle or aunt
 - nephew or niece.
- A medical record is a record created by a treating medical practitioner for a medical purpose, that is, for the medical assessment, diagnosis and treatment of a person.
- Information recorded about a person does not become a medical record simply because it contains information within it about medication or medical appointments. Therefore, documents used by residential services to support health care are generally not medical records for the purpose of this protocol.
- Community Visitors may, without consent from the resident or the consent of a person with legal authority to make medical decisions, see records where chemical or mechanical restraint is used, because chemical restraint is provided for the purpose of managing behaviour and not for medical treatment.

1.6 Secrecy requirements

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

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

1.7 Reporting requirements

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

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

After receiving the annual report, the Minister must then lay it before the Legislative Council and the Legislative Assembly within 14 sitting days of the council or assembly as prescribed in Section 35 (2) of the Disability Act.

2 Protocol

2.1 Protocol for visits

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

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

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

Community Visitors usually visit in panels of two people. The Panel Secretary is responsible for coordinating visits and completing the Record of Visit (Appendix 2).

2.1.1 Responsibilities of Community Visitors during a visit

When visiting a residential service premises, Community Visitors will:

- Produce identification and explain the role of Community Visitors and the purpose of the visit to residents and staff.
- Respect the rights of residents if they indicate that they do not wish to discuss anything with the Community Visitor.
- Meet their responsibilities for visiting as required by the Disability Act and set out in this protocol under, 'the functions of a Community Visitor' (page 3).
- Ensure that sufficient information about the CVP is provided and available at the residential service premises.
- Complete a Record of Visit that outlines general comments based on the observations, discussions and inspections of the visit using the prescribed form in the *Disability Regulations 2007*. The most senior staff member present must sign this form and leave a copy at the residential service premises.
- List any issues of concern that arise that cannot be resolved during the visit in the Record of Visit.
- Follow up any outstanding issues from previous visits and record this in the appropriate section of the Record of Visit.
- Send a copy of all reports arising from the visit to the responsible Regional Convenor.

2.1.2 Responsibilities of residential staff on duty during a visit

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

- Request that the Community Visitors produce identification when they arrive at the service. If the Community Visitors fail to produce identification, access to the premises should be denied.
- Introduce the Community Visitors to residents and explain their role and, when necessary, make available information about the CVP as provided by Community Visitors.
- Provide the Community Visitors with reasonable assistance to effectively carry out their responsibilities during the visit.
- Inform residents and respect their right to speak confidentially to the Community Visitors if they choose.
- Give full and true answers to the best of their knowledge to questions asked by a Community Visitor in relation to their responsibilities under the Disability Act. Where a staff member is unable to answer a question asked by a Community Visitor, the required information should be provided to the Community Visitor as soon as possible.

- Read and sign the Record of Visit completed by Community Visitors. Signing of the record indicates that they have noted the contents; it does not mean endorsement or agreement. A copy of the Record of Visit is to be kept by the disability service provider as required by section 132 of the Disability Act.
- Ensure that a copy of the completed Record of Visit is provided to the nominated service manager.

2.2 Protocol for resolving issues after the visit

Community Visitors provide the Record of Visit which documents details of any issues to be addressed, as part of their role and function defined under the *Disability Act 2006*. The following information outlines the processes and responsibilities of each party to resolve the issues raised in this report.

If either the disability service provider or the Regional Convenor does not agree that the issue is within the parameters of the Community Visitor's role or the issue is repetitive, either party can challenge the requirement to respond to the issues raised.

2.2.1 Responsibilities of Regional Convenors

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

For each reporting year, this information will form the basis of the Community Visitors Board Annual Report, which is required by the Disability Act (section 35) to be provided to the Minister prior to 30 September each year.

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

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

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

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

Issues that cannot be resolved immediately due to factors outside the control of the service will be referred to the CVP Unit Coordinator for monitoring and/or for action if required.

2.2.2 Responsibilities of disability service providers

The nominated service manager is responsible for ensuring that processes are in place so that, pursuant to Section 132 of the Disability Act, a copy of the Record of Visit is kept by the disability service provider.

The nominated service manager will provide a timely response to issues raised by Community Visitors utilising the CVP-Issues Response Form (Appendix 3). This means that a response will be provided as soon as is practical to critical issues and within a maximum of 21 working days to non-critical issues to the Regional Convenor and the CVP Unit Coordinator.

The nominated service manager will provide a summary status report at least quarterly or as negotiated with the CVP.

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

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

2.2.3 Process for addressing unresolved issues

- Every effort should be made to resolve issues at the most local level possible.
- The Regional Convenor will raise unresolved matters with the appropriate senior staff member nominated by the service at a regular liaison meeting or urgent meeting. If the matter can be satisfactorily resolved then the resolution will be documented and no further action will be taken.
- The Regional Convenor can request the CVP Unit Coordinator to refer to the department's senior management in the region, as appropriate, matters or issues of concern that have not been resolved satisfactorily.
- The CVP will notify the disability service provider if issues are to be raised with the department's senior management or others.
- Following this, for serious unresolved issues, it may be necessary for the CVP Unit Coordinator to refer the matter to the CVP Manager and/or the Community Visitors Board.
- Where serious allegations are involved, the CVP Manager will refer the matter to the appropriate authorities immediately. Where possible and appropriate, the disability service provider will be notified. This includes any issue that places the physical or psychological health or wellbeing of a resident at risk.
- Section 33 of the Disability Act permits the Community Visitors Board to use its discretion to refer a matter reported by a Community Visitor to be dealt with by any other person, including:
 - a. the Secretary
 - b. the Disability Services Commissioner
 - c. the Senior Practitioner
 - d. the Ombudsman.

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

2.3 Resolving disputes in relation to this protocol and the visiting process

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

The Community Visitor or staff member should attempt to resolve the dispute at the time of visit.

- If unresolved, the dispute should be referred to the CVP Unit Coordinator and the nominated service manager. A meeting may then be required in order to clarify and resolve the situation. At this stage a written record should be made noting the parties involved, the substance of the dispute and its resolution or any steps taken towards resolution.
- If the dispute still remains unresolved, details should be put in writing and referred to the appropriate senior manager of either the CSO or the disability service provider and the CVP Manager.

- Should the dispute continue to remain unresolved, it will be referred to the Regional Director for a Department of Human Services managed service or the CEO of a Community Service Organisation, or the Public Advocate. Reference to this level of the dispute resolution process will be unusual and will only occur after all previous stages in the dispute procedure have been undertaken.
- Actions to resolve the dispute will be implemented within timelines that are agreed upon by the parties involved.

2.4 Record of Visits

A hard copy of this protocol is to be kept at each residential facility and the Disability Service Provider is required to keep copies of the completed Records of Visit and Community Visitors Program-Issues Response Forms.

2.5 Notification of resident deaths

In the event of a resident death occurring in a residential service, the Department of Human Services Quality and Sector Development Branch will advise the CVP Manager of a resident death. The following information will be provided: first name, surname, date of death, date of birth, residential address and whether the facility is managed by the department or is a CSO.

3 Glossary of terms

Community Service Organisation (CSO) – refer to Section 1.1 of this document.

Community Visitors – refer to Section 1.1 of this document.

Community Visitors Board – refer to Section 1.1 of this document.

Record of Visit – this is the formal record of visit as required by the Act (section 132). It provides evidence of the visit and general comments about the visit and is contained in the *Disability Regulations 2007* (Refer to Appendix 2).

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

Community Visitor Program Manager – the person who manages the Community Visitors Program at the Office of the Public Advocate

Community Visitors Program Unit – is the unit based at the Office of the Public Advocate with responsibility for the management of the Community Visitors Program.

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

Department of Human Services (the department) – refer to Section 1.1 of this document.

Disability Accommodation Services (DAS) – refer to Section 1.1 of this document.

Disability Act 2006 – refer to Section 1.1 of this document.

Disability Service Provider – refer to Section 1.1 of this document.

Disability Services Division – A departmental division responsible for the administration of the Disability Act.

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

CVP – Issues Response Form – Form used by the nominated service manager to respond to the Regional Convenor and CVP Unit Coordinator to issues raised by the CVP (Refer to Appendix 3).

Medical record – A medical record is a record created by a treating medical practitioner for a medical purpose, that is, for the medical assessment, diagnosis and treatment of a person. Information recorded about a person does not become a medical record simply because it contains information within it about medication or medical appointments. Documents used by the Disability Service Provider to support health care are generally not medical records for the purpose of this protocol.

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

Office of the Public Advocate – refer to Section 1.1 of this document.

Panel Secretary – The Community Visitor responsible for coordinating the visit and completing the Record of Visit.

Regional Convenors – refer to Section 1.1 of this document.

Register of Disability Service Providers – refer to Section 1.1 of this document.

Residential service – Refers to a residential institution or residential service provided by the department or a community service organisation and funded by the Disability Services Division. Residential services have rostered staff and provide accommodation and support or respite to people with a disability, accessing services funded under the Disability Act.

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

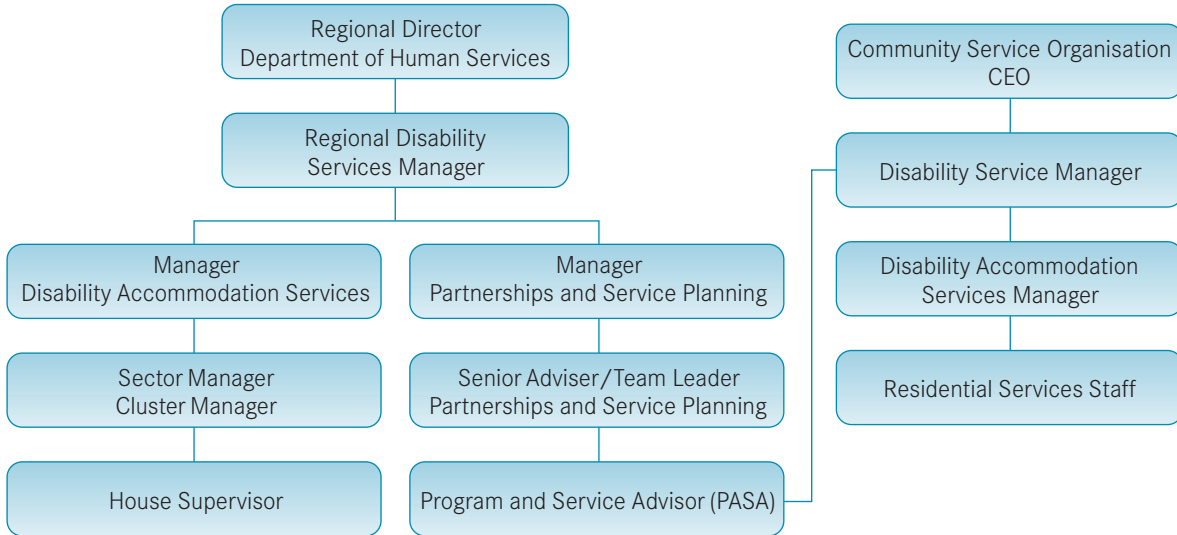
Residential institution – Refers to the definition under the Disability Act. It includes Sandhurst, Colanda and the Long Term Rehabilitation Unit at Plenty Residential Services.

Resident's Guardian – the person appointed by the Victorian Civil and Administrative Tribunal to make decisions under the *Guardianship and Administration Act 1986* for a person with a disability aged 18 years or more, or appointed by a court, and if the resident is a child, it includes the child's guardian whether or not they are the child's natural parent.

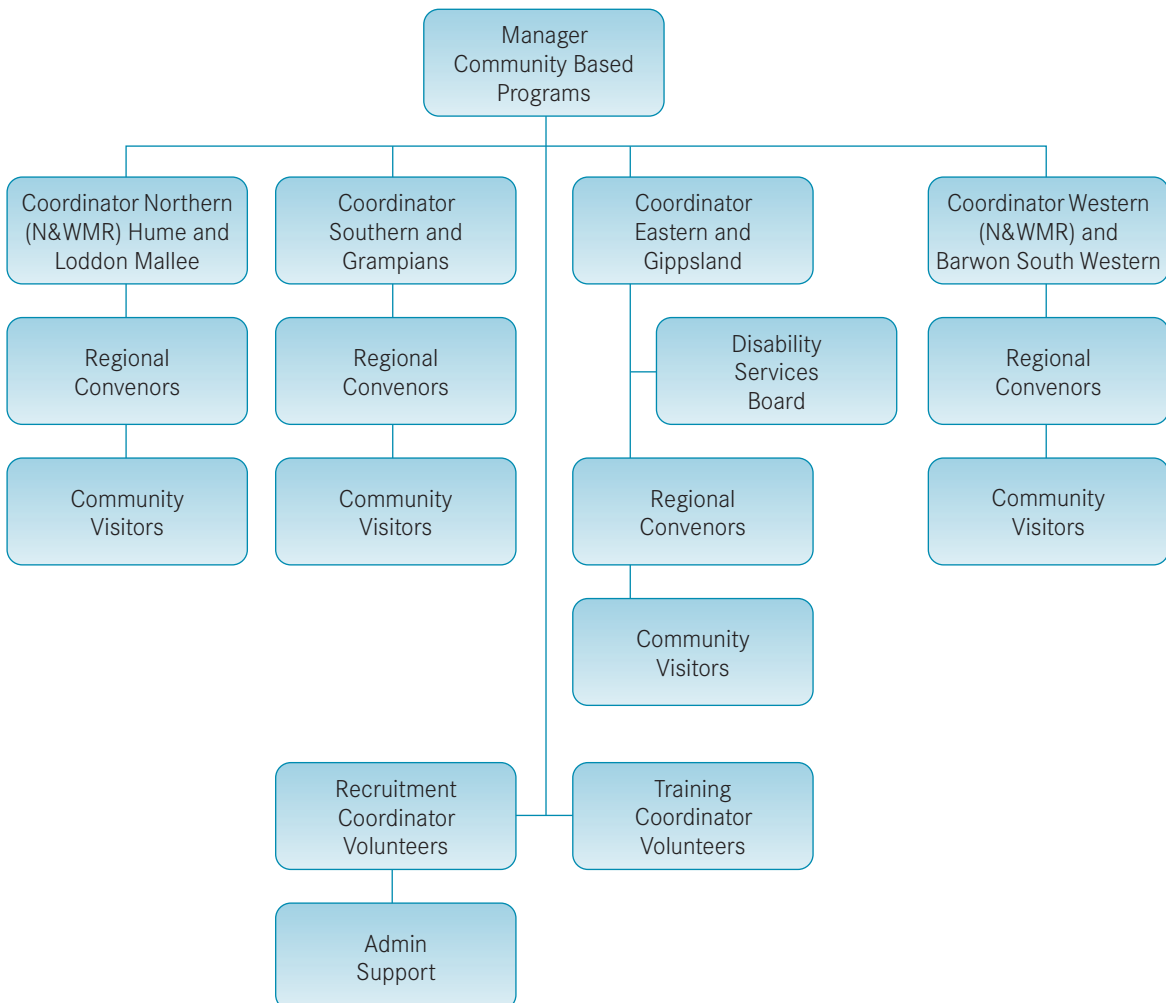
Support plan – is an individualised plan that reflects the support needs of a person with a disability across a whole range of life areas, as outlined in the planning provisions of the Act (sections 52–55).

4 Organisational charts

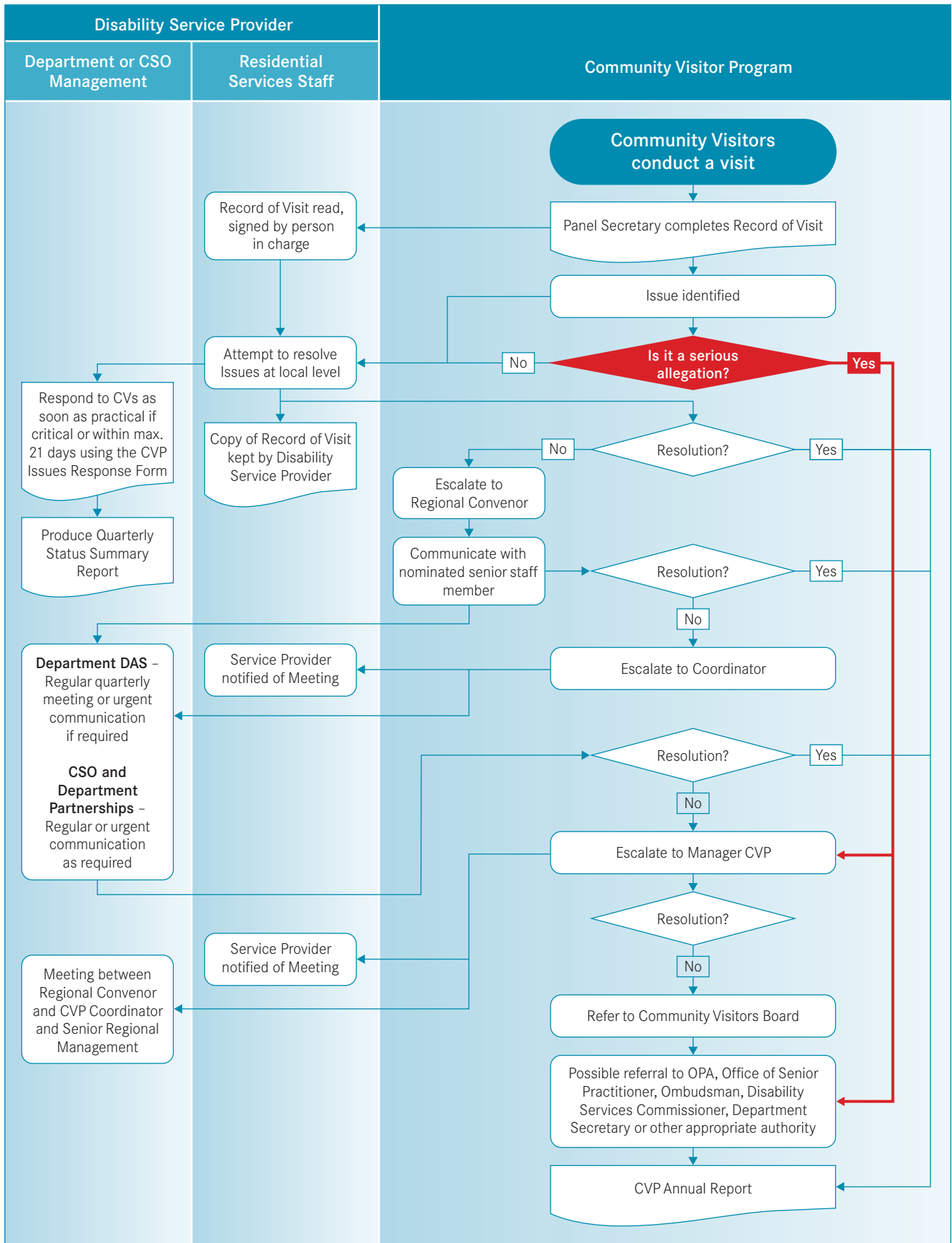
4.1 Disability Service Providers – Department of Human Services and Community Service Organisations



4.2 Community Visitors Program



5 Community Visitors reporting flowchart



Appendix 1

Relevant sections of the *Disability Act 2006*

The information below is extracted from the *Disability Act 2006*.

Part 2 – Objectives and principles

4. Objectives of the Act

The objectives of this Act are to:

- (a) advance the inclusion and participation in the community of persons with a disability
- (b) promote a strategic whole-of-government approach in supporting the needs and aspirations of persons with a disability
- (c) facilitate the planning, funding and provision of services, programs and initiatives for persons with a disability
- (d) promote and protect the rights of persons accessing disability services
- (e) support the provision of high-quality disability services
- (f) make disability service providers accountable to persons accessing those disability services
- (g) ensure the efficient and effective use of public funds in the provision of disability services.

5. Principles

- (1) Persons with a disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.
- (2) Persons with a disability have the same right as other members of the community to:
 - (a) respect for their human worth and dignity as individuals
 - (b) live free from abuse, neglect or exploitation
 - (c) realise their individual capacity for physical, social, emotional and intellectual development
 - (d) exercise control over their own lives
 - (e) participate actively in the decisions that affect their lives and have information and be supported where necessary, to enable this to occur
 - (f) access information and communicate in a manner appropriate to their communication and cultural needs
 - (g) services which support their quality of life.
- (3) Disability services should:
 - (a) advance the inclusion and participation in the community of persons with a disability with the aim of achieving their individual aspirations
 - (b) be flexible and responsive to the individual needs of persons with a disability
 - (c) maximise the choice and independence of persons with a disability
 - (d) be designed and provided in a manner that recognises different models of practice may be required to assist people with different types of disability and at different stages in their lives to realise their physical, social, emotional and intellectual capacities
 - (e) enable persons with a disability to access services as part of their local community and foster collaboration, coordination and integration with other local services
 - (f) as far as possible, be provided in a manner so that a person with a disability need not move out of his or her local community to access the disability services required
 - (g) be of high quality and provided by appropriately skilled and experienced staff who have opportunities for on-going learning and development
 - (h) consider and respect the role of families and other persons who are significant in the life of the person with a disability
 - (i) acknowledge the important role families have in supporting persons with a disability
 - (j) acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities

- (k) where possible, strengthen and build capacity of families who are supporting persons with a disability
 - (l) have regard for the needs of children with a disability and preserve and promote relationships between the child, their family and other persons who are significant in the life of the child with a disability
 - (m) be provided in a manner that respects the privacy and dignity of persons accessing the disability services
 - (n) be provided in a way which reasonably balances safety with the right of persons with a disability to choose to participate in activities involving a degree of risk
 - (o) have regard for any potential increased disadvantage which may be experienced by persons with a disability as a result of their gender, language, cultural or indigenous background or location
 - (p) be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support where necessary to enable adequate decision making about the services they receive
 - (q) be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability
 - (r) be accountable for the quality of those services and for the extent to which the rights of persons with a disability are promoted and protected in the provision of those services.
- (4) If a restriction on the rights or opportunities of a person with a disability is necessary, the option chosen should be the option which is the least restrictive of the person as is possible in the circumstances.
- (5) It is the intention of Parliament that the principles specified in this section should wherever possible be given effect to in the administration of the Act and the provision of disability services.

6. Persons with an intellectual disability

- (1) The following principles apply specifically in respect of persons with an intellectual disability—
- (a) persons with an intellectual disability have a capacity for physical, social, emotional and intellectual development
 - (b) persons with an intellectual disability have the right to opportunities to develop and maintain skills and to participate in activities that enable them to achieve valued roles in the community
 - (c) services for persons with an intellectual disability should be designed and provided in a manner which maximises opportunities for persons living in residential institutions to live in community-based accommodation
 - (d) persons with an intellectual disability living in a residential institution have the right to a high quality of care and development opportunities whilst they continue to reside in the institution
 - (e) services for persons with an intellectual disability should be designed and provided in a manner that ensures developmental opportunities exist to enable the realisation of their individual capacities
 - (f) services for persons with an intellectual disability should be designed and provided in a manner that ensures that a particular disability service provider cannot exercise control over all or most aspects of the life of a person with an intellectual disability.
- (2) The repeal of the Intellectually Disabled Persons' Services Act 1986 by this Act does not affect the responsibility of the Minister and the Secretary for the provision, management, development and planning of services for persons with an intellectual disability.

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

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

- (1) The contents of any advice, notice or information given or provided to a person with a disability under this Act must be explained by the person giving the advice, notice or information to the maximum extent possible to the person with a disability in the language, mode of communication and terms which that person is most likely to understand.
- (2) An explanation given under subsection (1) must, where reasonable, be given both orally and in writing.
- (3) If a person appears to be incapable of reading and understanding information provided under this Act, a disability service provider must use reasonable endeavours to convey the information to the person in the language, mode of communication or terms which the person is most likely to understand.
- (4) For the purposes of subsection (3), the disability service provider may give a copy of the advice, notice or information:
 - (a) to a family member, guardian, advocate or other person chosen by the person with a disability; or
 - (b) if no person is chosen under paragraph (a), to a person who the disability service provider considers can assist the person with a disability and is not employed by, or a representative of, the disability service provider.

Part 3 - Administration

Division 6 – Community visitors

28. Community visitors

- (1) The Governor in Council may on the recommendation of the Public Advocate appoint community visitors for each region.
- (2) Each community visitor–
 - (a) holds office for a period of 3 years;
 - (b) is eligible for re-appointment at the end of the term of office;
 - (c) is entitled to be paid any fees and travelling and other allowances fixed by the Governor in Council;
 - (d) is not in respect of the office of community visitor subject to the provisions of the Public Administration Act 2004.
- (3) A person can not be appointed as a community visitor if that person–
 - (a) holds any appointment or employment with the Department; or
 - (b) has any direct interest in any contract with the Department.
- (4) In nominating persons for appointment as community visitors, the Public Advocate must as far as practicable nominate an equal number of males and females.

29. General provisions as to community visitors

- (1) The Governor in Council may specify terms and conditions of appointment in the instrument of appointment of a person as a community visitor.
- (2) The Governor in Council may on the recommendation of the Public Advocate remove a community visitor from office.
- (3) A person may resign from the office of community visitor by writing signed by that person and delivered to the Governor in Council.
- (4) The office of a community visitor becomes vacant if that community visitor–
 - (a) becomes bankrupt; or
 - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) becomes incapable of performing the duties of the office of community visitor; or
 - (d) is removed from office or resigns from office.

30. Functions of a community visitor

The functions of a community visitor are to visit any premises where a disability service provider is providing residential services in the region for which the community visitor is appointed and to inquire into–

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

31. Certain persons deemed to be community visitors

- (1) Any person who is appointed by the Minister or the Secretary for the purpose of any investigation in connection with the administration of this Act—
 - (a) is by virtue of that office or appointment deemed to be a community visitor for every region; and
 - (b) has and may exercise all the powers conferred on a community visitor by this Act.
- (2) Subsection (1) does not require a person deemed to be a community visitor to perform any of the functions or duties of a community visitor.

32. Community Visitors Board

- (1) The Community Visitors Board established by section 61 of the Intellectually Disabled Persons' Services Act 1986 is continued under this Act.
- (2) The Community Visitors Board consists of—
 - (a) the Public Advocate; and
 - (b) 2 community visitors elected in accordance with the regulations by community visitors.
- (3) The functions of the Community Visitors Board are to—
 - (a) represent community visitors;
 - (b) prepare and circulate publications explaining the role of community visitors;
 - (c) supervise the training of community visitors;
 - (d) report a matter to the Public Advocate or the Minister;
 - (e) refer a matter under section 33;
 - (f) prepare an annual report.

33. Matter may be referred

Without limiting the discretion of the Community Visitors Board to refer a matter to any other person, the Community Visitors Board may refer a matter reported by a community visitor to whichever of the following the Community Visitors Board considers is the appropriate person to deal with that matter—

- (a) the Secretary;
- (b) the Disability Services Commissioner;
- (c) the Senior Practitioner;
- (d) the Ombudsman.

34. Reports by community visitors

- (1) The community visitors for a region must at least twice a year submit a report to the Community Visitors Board on visits made since the last report.
- (2) The Minister may require the Community Visitors Board to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.
- (3) The Community Visitors Board may at any time submit a report to the Minister if the Community Visitors Board considers that any matter should be considered personally by the Minister.
- (4) A community visitor may at any time submit a report to the Community Visitors Board containing any recommendations that the community visitor considers should be considered by the Community Visitors Board.

35. Annual report of community visitors

- (1) The Community Visitors Board must as soon as practicable after the end of each financial year but not later than the following 30 September, submit to the Minister a report on the activities of community visitors during the financial year.

- (2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as the case may be after the annual report has been received by the Minister.

36. Secrecy provision

- (1) Unless subsection (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly make a record of, or divulge or communicate to any person, or make use of, any information that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—
- (a) to perform any official duties; or
 - (b) to perform or exercise any function or power under this Act.
- 60 penalty units.
- (2) Subsection (1) does not prevent a person from—
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
 - (b) divulging or communicating to a court, in the course of any proceedings referred to in paragraph (a), any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or in the exercise of a power referred to in subsection (1); or
 - (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be, if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

57. Residential statement

- (1) A disability service provider providing residential services must—
- (a) give a person with a disability a residential statement in writing when they commence residing at the residential service; and
 - (b) provide a copy of the residential statement to the resident's guardian or the resident's administrator, if any.
- (2) The residential statement must specify—
- (a) the period to which the residential statement relates;
 - (b) details of the residential services to be provided;
 - (c) the name and contact details of the disability service provider, and if the disability service provider has an agent, the name and contact details of the agent;
 - (d) a statement as to the amount of the residential charge, what components will be provided and when and how the amount is to be paid;
 - (e) any conditions which apply to the provision of the residential services;
- Example**
- A resident may have a behaviour management plan with which the resident must comply.
- (f) information relating to a matter which is prescribed for the purposes of this section.
- (3) A residential statement may include other information.
- (4) A residential statement must not include information that is inconsistent with this Act.
- (5) If any information provided under subsection (3) is inconsistent with this Act or with the information required to be provided under subsection (2), the information cannot be used or relied upon.

- (6) A statement of the duties of the disability service provider and the rights and duties of residents in the form approved by the Secretary must be attached to the residential statement.
- (7) The statement of resident's rights and duties must state the rights and duties of a resident under this Act including—
 - (a) the right to see a community visitor;
 - (b) the right to make a complaint;
 - (c) the procedures for making a complaint or seeking a review under this Act.
- (8) The disability service provider must give the resident reasonable notice in writing of any change in the information provided in the residential statement.
- (9) If notice of any change in the information provided in the residential statement is given in accordance with another provision of this Act, the notice is also to be taken to have been given under subsection (8).
- (10) The information provided in a residential statement is to be taken to have been updated to include the information provided under subsection (8).
- (11) If a disability service provider includes details of their agent in the residential statement, a reference in this Part to the disability service provider includes a reference to their agent.
- (12) If a disability service provider fails to provide information required under this section or fails to give reasonable notice of any change in the information, the disability service provider cannot rely on that information to enforce a provision of this Act.

Division 7 – Visits by community visitors

129. Visiting of residential service

- (1) A community visitor may visit any premises at which a disability service provider is providing a residential service with or without any previous notice at the times and periods that the community visitor thinks fit.
- (2) A residential institution must be visited at least once every month by a community visitor for the region in which the residential institution is located.
- (3) The Minister may direct a community visitor to visit the premises at which a disability service provider is providing a residential service at the times that the Minister directs.

130. Powers of inspection

- (1) A community visitor is entitled when visiting a disability service provider providing a residential service to—
 - (a) inspect any part of the premises in which the residential service is being provided;
 - (b) see any resident;
 - (c) make enquiries relating to the provision of services to the residents;
 - (d) inspect any document relating to any resident which is not a medical record and any records required to be kept by or under this Act;
 - (e) inspect any medical record relating to a resident with the consent of the resident or the resident's guardian.
- (2) If a community visitor wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the disability service provider and any member of the staff or management of the residential service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.

- (3) A disability service provider or member of the staff or management of a residential service must–
- (a) reasonably render assistance when required to do so under subsection (2);
 - (b) give full and true answers to the best of that person’s knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act.
- 60 penalty units.

131. Request to see a community visitor


- (1) Any resident in a residential service or any person on behalf of the resident may request the disability service provider to arrange for the resident to be seen by a community visitor.
- (2) The disability service provider must within 72 hours of receiving a request under subsection (1) advise the Community Visitors Board that a request has been made.
5 penalty units.
- (3) Unless subsection (4) applies, the Community Visitors Board must ensure a request is responded to within 7 days of the request being received under subsection (2).
- (4) For the purposes of subsection (3), if the Community Visitors Board considers that it would be appropriate in the circumstances, the Community Visitors Board may arrange for the Public Advocate to respond to the request.
- (5) The Community Visitors Board may refuse a request under subsection (2) if the Community Visitors Board considers that the request is–
 - (a) vexatious; or
 - (b) frivolous; or
 - (c) lacking in substance.

132. Record of visits

A disability service provider providing a residential service must keep a record in the prescribed form of visits by community visitors to the residential service.

5 penalty units.

Appendix 3 Community Visitors Program – Issues Response Form

 Office of the Public Advocate

Community Visitors Program (CVP) - Issues Response Form

Disability Accommodation Services

Name of organisation (DHS or CSO):

Facility address:

Region:

Report reference no:

Date of visit by Community Visitors:

Names of Community Visitors:

Name of person responding:

Date of response:

Please email respond within 21 days to:

Community Visitor/Regional Convenor:

Coordinator (CVP):

ISSUES: (Number the issues and corresponding responses)

[insert text here]

Attach additional page if required.

