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Office for Disability
50 Lonsdale Street
Melbourne VIC 3000

By email: disabilityplan@dffh.vic.gov.au

To whom it may concern

Victoria's next State Disability Plan and Autism Plan (2027 to 2031)

Thank you for providing the Victorian Equal Opportunity and Human Rights Commission (**the Commission**) with an opportunity for input into the development of Victoria's next State Disability Plan and Autism Plan (2027 to 2031) (**Disability and Autism Plans**).

The Commission is Victoria's independent human rights statutory body with responsibilities under three laws, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) and the *Equal Opportunity Act 2010* (Vic) (**EO Act**) and the *Change or Suppression (Conversion) Practices Prohibition Act* (Vic) 2021.

The Commission's role is to protect and promote human rights and to eliminate discrimination, sexual harassment, vilification and victimisation, in line with our vision for a fair, safe and inclusive Victoria where every person is respected and treated with dignity.

The current State Disability Plan and Autism Plan

The Commission is providing this submission to inform development of the next plans by reflecting on the current planning documents set to end in mid-2027. The vision for the current State Disability Plan (2022-26) is for an inclusive, accessible and safe Victoria that upholds the rights of people with disability, celebrates our diversity and pride, and expands our opportunities to belong and control our lives.¹ The Victorian Autism Plan's vision is for an inclusive Victoria where autistic people enjoy lives with real opportunities for choice, participation and contribution within our community.²

Both plans include four 'pillars'³ or 'domains'⁴:

1. Inclusive communities

¹ Department of Families, Fairness and Housing (Vic), *Inclusive Victoria: State disability plan 2022–2026* (March 2022) 23.

They ok² Department of Families, Fairness and Housing (Vic), *Victorian autism plan* (December 2019) 7.

³ Department of Families, Fairness and Housing (Vic), *Inclusive Victoria: State disability plan 2022–2026* (March 2022) 23.

⁴ Department of Families, Fairness and Housing (Vic), *Victorian autism plan* (December 2019) 9.

2. Health, housing and wellbeing
3. Fairness and safety, and
4. Opportunity and pride (previously 'contributing lives').

The Commission considers that framing seeking to improve outcomes within such pillars would benefit from embedding a human rights framework. This should include putting the voices of people with disability at the heart of the Plans, with framing and planning occurring with the collaboration and leadership of people with disability.

The framework provided by the *United Nations Convention on the Rights of Persons with Disability 2006 (CRPD)*, the Charter and the EO Act can provide guidance on how to achieve this.

International human rights responsibilities

The CRPD aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all people with disability, and to promote respect for their inherent dignity.⁵

As a party to the CRPD, together with the federal government, Victoria shares responsibilities to implement the treaty. The Disability and Autism Plans will be strengthened by greater incorporation of the CRPD.

There are a number of rights and duties under the CRPD that are relevant to improving the lives and promoting the full enjoyment of human rights and participation of people with disability in Victoria. These rights and duties include but are not limited to:

- the requirement of government to raise awareness of the rights and dignity of people with disability⁶
- the responsibility of government to ensure equal access to the physical environment, transportation, information and communication, and to other facilities and services to the public⁷
- the requirement of government to ensure the protection and safety of people with disability in situations of risk including in natural disasters⁸
- the right to live independently and participate in the community⁹

⁵ *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 1.

⁶ Ibid art 8.

⁷ Ibid art 9.

⁸ Ibid art 11.

⁹ Ibid art 19.

- the right to education including the right not to be excluded from the general education system on the basis of disability¹⁰
- the right to employment including the provision of reasonable accommodations.¹¹

Importantly, the CRPD requires States Parties to closely consult with and actively involve people with disability, including children with disability, through their representative organisations.¹²

While the *State disability plan and Victorian autism plan 2027 to 2031* engagement paper references self-determination for First Nations people, intersectional approaches, co-design, inclusive workplaces and disability pride,¹³ there should be clearer reference to human rights principles and the voices of people with disability as integral to any policy development and implementation.

Recommendation 1: The Disability and Autism Plans include specific reference to human rights contained in the CRPD, including the requirement to closely collaborate with and actively involve people with disability, being integral to any policy development and implementation.

The Victorian Charter

The purpose of the Charter is to protect and promote human rights.¹⁴ The Charter achieves this in a number of ways, including setting out the rights and freedoms that Parliament seeks to protect,¹⁵ requiring courts to interpret laws in a way that is compatible with human rights so far as it is possible to do so consistently with their purpose,¹⁶ and requiring all public authorities to act in a way that is compatible with human rights.¹⁷

This means, as a public authority, the Department of Families, Fairness and Housing has an obligation to consider and act compatibly with the Charter in creating the Disability and Autism Plans.

Rights that are relevant to the new Disability and Autism Plans include the right to equality and non-discrimination,¹⁸ the right to life,¹⁹ freedom from cruel, inhuman or degrading treatment,²⁰ right to

¹⁰ Ibid art 24.

¹¹ Ibid art 27

¹² Ibid art 4(3).

¹³ Department of Families, Fairness and Housing (Vic), *State disability plan and Victorian autism plan 2027 to 2031* (Engagement paper, April 2026) 16.

¹⁴ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 1(2).

¹⁵ Ibid s 1(2)(a)

¹⁶ Ibid s32(1).

¹⁷ Ibid s 38(1).

¹⁸ Ibid s 8.

¹⁹ Ibid s 9.

²⁰ Ibid s 10(b).

privacy,²¹ protection of families and children,²² right to take part in public life,²³ property rights,²⁴ right to liberty and security of person,²⁵ and humane treatment when deprived of liberty.²⁶

In some circumstances, a person's rights may need to be balanced against the rights of another person or group, or reasonably limited. The Charter provides that a right may only be limited in a way that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors.²⁷

The current State Disability Plan mentions that the Charter is part of ensuring the rights of people with disability,²⁸ and the Autism Plan references the Charter as a guiding principle.²⁹ However, neither provide specific guidance on how public authorities can comply with the Charter such as actions that public authorities can take to promote and protect rights in the context of disability action planning.

Making clear the requirement that public authorities must give proper consideration to, and act compatibly with, relevant Charter rights will ensure more effective, rights-based Disability and Autism Plans.

Recommendation 2: The Charter requirements be specifically referenced in the Disability and Autism Plans to reinforce the duty of public authorities to give proper consideration to, and to act compatibly with, relevant Charter rights.

Discrimination and vilification protections

The EO Act provides people with disability protections from discrimination and vilification.

Discrimination

People are protected from disability discrimination in certain areas of life, including employment, education, the provision of services and accommodation, among other areas.³⁰ Both direct and indirect discrimination are unlawful unless an exception or exemption applies.³¹ The EO Act also requires duty holders to provide reasonable adjustments to people with disability.²⁷

²¹ Ibid s 13.

²² Ibid s 17.

²³ Ibid s 18.

²⁴ Ibid s 20.

²⁵ Ibid s 21.

²⁶ Ibid s 22.

²⁷ Ibid s 7(2).

²⁸ Department of Families, Fairness and Housing (Vic), *Inclusive Victoria: State disability plan 2022–2026* (March 2022) 21.

²⁹ Department of Families, Fairness and Housing (Vic), *Victorian autism plan: 2023 refresh* (November 2023) 11.

³⁰ *Equal Opportunity Act 2010* (Vic) ss 18, 38, 44 and 53.

³¹ Ibid ss 8 and 9.

Importantly, duty holders have a positive duty to take reasonable and proportionate measures to eliminate discrimination as far as possible.³² This means that positive action must be taken to prevent discrimination from occurring – regardless of whether someone has made a complaint. Planning is vital for duty holders to embed requirements and processes that can meet the positive duty.

Despite these protections, the EO Act is only referenced in the State Disability Plan under the discussion of rights under the *Residential Tenancies Act 1997*,³³ and is not mentioned in the Autism Plan.

The Disability and Autism Plans would benefit from specific references to protections from discrimination and acknowledgement of the positive duty under the EO Act.

Vilification

Following recent reforms, the EO Act now contains protections from vilification on the basis eight attributes, including disability.³⁴

The EO Act protects against public conduct relating to a person's disability that would be considered by a reasonable person with a disability to be hateful, seriously contemptuous of, reviling or severely ridiculing, a person or group of people with disability.³⁵

The EO Act also protects against public conduct likely to incite hatred against, serious contempt for, revulsion towards or severe ridicule of another person or a group of people because of their disability.³⁶

These protections have come into effect since the commencement of the most recent State Disability Plan, and should be referenced in the next Disability and Autism Plans.

Recommendation 3: Protections from discrimination and the positive duty be added to the new State Disability Plan and Autism Plan, including in sections on employment, education and provision of services.

Recommendation 4: Protections from vilification be included in the new State Disability Plan and Autism Plan.

³² Ibid s 15.

³³ Department of Families, Fairness and Housing (Vic), *Inclusive Victoria: State disability plan 2022–2026* (March 2022) 47.

³⁴ *Equal Opportunity Act 2010* (Vic) s 102B.

³⁵ Ibid s 102D(1).

³⁶ Ibid s 102E(1).

Conclusion

The next Disability and Autism Plans provide an opportunity to continue to improve the rights of people with disability in Victoria.

Victoria's human rights framework provides clear tools to achieve this.

Through the measures outlined in this submission, including close, ongoing collaboration with people with disability, the Victorian Government can continue to create a more inclusive, accessible and safe Victoria for people with disability.

If you would like to discuss any of these points further, including how to effectively implement a human rights framework with the next Disability and Autism Plans, please contact me on commissioner@veohrc.vic.gov.au.

Yours sincerely



Ro Allen AM

Victorian Equal Opportunity and Human Rights Commissioner